TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. [redacted]223.

FRANK DE L. CARRINGTON, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

FILED FEBRUARY 6, 1907.

(20,562)

(20,562)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1906.

No. 597.

FRANK DE L. CARRINGTON, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 6, 1907.

1 UNITED STATES OF AMERICA, *Philippine Islands:*

In the Supreme Court of the Philippine Islands.

Cause No. 2600.

THE UNITED STATES OF AMERICA, Plaintiff and Appellee,
vs.
FRANK DE L. CARRINGTON, Defendant and Appellant.

Record.

Be it remembered that on the 14th day of October, 1904, an information was filed in the Clerk's office of the Court of First Instance of the City of Manila, in the above entitled cause, then numbered 1835, by Wm. W. Barre, then acting Auditor of the Philippine Islands, of which the following is a true copy, to-wit:

UNITED STATES OF AMERICA, *Philippine Islands:*

In the Court of First Instance of the City of Manila.

No. 1835.

THE UNITED STATES, Plaintiff,
vs.
FRANK DE L. CARRINGTON, Defendant.

Complaint.

Falsification of Public Document by a Public Official.

The undersigned accuses Frank de L. Carrington of the crime of falsification of a public document by a public official, committed as follows:

That on or about the 12th day of February, 1904, in the
2 City of Manila, Philippine Islands, the said Frank de L. Carrington, being then and there a public official of the United States Civil Government of the Philippine Islands, to wit, a duly appointed and commissioned major of the First Infantry, United States Army, and the duly designated, qualified and acting commander of the Provisional Battalion of the Philippine Scouts, and a duly appointed, qualified and acting disbursing officer for public funds of the said United States Civil Government of the Philippine Islands, appropriated on account of said Provisional Battalion and on account of the Louisiana Purchase Exposition at St. Louis, did, wilfully, unlawfully, feloniously, corruptly, with abuse of his office, and with the intent then and there to deceive and defraud the United States Civil Government of the Philippine

Islands and its officials, falsify a public or official document of which he had charge and in which he had intervention by reason of his office, namely, a voucher for the expenditure of public funds, which voucher is in words and figures following, to wit:

Auditor 125.

General Expense Voucher.

Philippine Currency.

(Mexican or United States.)

Appropriation for Exposition Purposes, Act 824 F. Y., 1904.

The Government of the Philippine Archipelago to Charles A. Jollie, Dr.

Date.	Article or service.	Amount.	Remarks.
1904. Jan. 10	2750 ft. Hardwood Lumber @ $280. per M.	770.00	

Authority filed with voucher 1. Abt. Dis. Dec. 1903 (See Note D.)

I certify that the above account is correct and just. The services were rendered as stated and were necessary for the public
3 service. Articles purchased have been taken up in the property book of this.....office.....and will be ac-
(Name of office or station)
counted for to the Auditor on my Return for the period ending March 31st, 1904.

(Signed) F. DE L. CARRINGTON,
Maj. 1st Infantry, D. O.

Approved:
(Signed) F. DE L. CARRINGTON,
Maj. 1st Inf. Com'd'g Prov. Batt., N. S.

Received of Maj. F. de L. Carrington, 1st. Inf. this 10th day of January, 1904, the sum of seven hundred seventy (770) /100 Dollars, in full *of* payment of above, which I hereby certify to be correct.

Paid by check No. —.
Date ——, 190–.
On —— ——.
In favor of —— ——.

(Signed) CHARLES A. JOLLIE.
(Signature of Creditor.)

In this, that the said Frank de L. Carrington did then and there pervert the truth in the narration of facts contained in said voucher in that he then and there stated, declared and certified that he had, on the 10th day of January, 1904, purchased from Charles A. Jollie two thousand seven hundred fifty (2750) feet of hardwood lumber for seven hundred seventy (770.) pesos Philippine currency, and that he had on said date paid to the said Charles A. Jollie from public funds the sum of seven hundred seventy (770.00) pesos Philippine currency, and that the said voucher as stated by the said Carrington and as shown above was correct and just, when in truth and in fact the said Frank de L. Carrington did not, on January 10th, 1904, or on any other date, purchase from Charles A. Jollie two thousand seven hundred fifty (2750) feet of hardwood lumber for seven hundred seventy (770.00) pesos Philippine currency, and had not on said date, or on any other date, paid to said Charles A. Jollie the sum of seven hundred seventy (770.00) pesos Philippine currency for said lumber or for any other purpose.

All contrary to law.

(Signed) WM. W. BARRE.

Subscribed and sworn to before me and in my presence, in
4 the City of Manila, Philippine Islands, this 14th day of October, 1904 by the said W. W. Barre.

(S'g'd) MANUEL ARAULLO,
Court of First Instance, City of Manila, P. I.

Witnesses.	Addresses.
W. W. Barre	Acting Auditor.
C. A. Smith	Chief, Property Div'n, Auditor's office.
A. M. Easthagen	Examiner, Auditor's office.
Mr. Hauck	Auditor's Office.
Post Q. M. Srgt. Gillespie	Quartel España.
Charles A. Jollie	Clerk, Q. M. Dept., U. S. A.

Bail recommended four thousand (4000.) pesos Conant.

And that thereafter and on the 21st day of October, 1904, an order of arrest was issued in said cause by the Honorable Manuel Araullo, one of the judges of the Court of First Instance of the City of Manila, a true copy of which, with the return thereon, translated into English, is as follows:

Order of Arrest.

To any officer of the law:

You are hereby ordered to arrest Frank de L. Carrington, who is said to be in Manila, and who has been charged before me with the crime of falsification of a public document by a public official, and to bring him before me as soon as possible for further proceedings in accordance with law.

Manila, October 21, 1904.

(S'g'd) MANUEL ARAULLO,
Judge of the Court of First Instance of the City of Manila, Sala.

And that thereafter and on the 21st day of October, 1904, said arrest was duly made.

And that thereafter on the said 21st day of October, 1904, the amount of said defendant's bail was fixed at four thousand pesos, Philippine currency, and bail in the sum mentioned was furnished by good and sufficient sureties and approved by the said Hon-
5 orable Manuel Araullo, Judge of the Court of First Instance of the City of Manila.

That thereafter and after various preliminary motions had been heard and determined, and on the 13th day of December, 1904, in the said Court of First Instance of the City of Manila, the said defendant plead not guilty to the charge alleged against him in said complaint, and that thereafter and on the 24th day of January, 1905, a trial of the said cause was duly had before the Honorable John C. Sweeney, presiding judge of the Court of First Instance of the City of Manila, at which trial Messrs. Charles H. Smith and H. D. Gale appeared as Prosecuting Attorneys, and Messrs. Hartigan, Marple, Rohde & Gutierrez as attorneys for said defendant, and on the 21st day of February, 1905, said defendant was convicted of the crime charged against him in said complaint by the said Honorable John C. Sweeney, judge of said Court of First Instance of the City of Manila, as appears by a true copy of the opinion of said judge, bearing date of February 21st, 1905, which is as follows:

UNITED STATES OF AMERICA, *Philippine Islands:*

In the Court of First Instance of the City of Manila.

Criminal Case No. 1835.

THE UNITED STATES
vs.
FRANK DE L. CARRINGTON.

Falsification of a Public Document by a Public Official.

Sentence.

The complaint in this case in substance charges that the defendant, Frank de L. Carrington, on or about the 12th day of February, nineteen hundred and four, in the City of Manila, Philippine Islands, being then and there a public official of the United States Civil Government of the Philippine Islands, to wit, a
6 duly appointed and commissioned major of the First Infantry, United States Army, and the duly designated, qualified and acting commander of the Provisional Battalion of the Philippine Scouts, and a duly appointed, qualified and acting disbursing officer for public funds of the said United States Civil Government of the Philippine Islands, appropriated on account of the said Provisional Battalion and on account of the Louisiana Pur-

chase Exposition at St. Louis, did, wilfully, unlawfully, feloniously, corruptly, with abuse of his office, and with the intent then and there to deceive and defraud the United States Civil Government of the Philippine Islands and its officials, falsify a public or official document of which he had charge and in which he had intervention by reason of his office, namely, a voucher for the expenditure of public funds, which voucher is in part in words and figures following, to wit:

Auditor 125.

General Expense Voucher.

Philippine Currency.

(Mexican or United States.)

Appropriation for Exposition Purposes, Act 824 F. Y., 1904.

The Government of the Philippine Archipelago to Charles A. Jollie, Dr.

Date.	Article or service.	Amount.	Remarks.
1904. Jan. 10	2750 ft. Hardwood Lumber @ $280 per M...	770.00	

Authority filed with voucher 1. Abt. Dis. Dec. 1903.

In that the said Frank de L. Carrington did then and there pervert the truth in the narration of facts contained in said voucher, in that he did then and there state, declare and certify that on the 10th day of January, 1904, he had purchased from Charles A. Jollie two thousand seven hundred and fifty feet (2750) *feet* of hardwood lumber for seven hundred and seventy (770.00)
7 pesos, Philippine currency, and that he had on said date paid to the said Charles A. Jollie from public funds the sum of seven hundred and seventy (770.00) pesos, Philippine currency, and that the said voucher as stated by the said Carrington and as shown above was correct and just, when in truth and in fact the said Frank de L. Carrington did not, on January 10, 1904, or on any other date, purchase from Charles A. Jollie two thousand seven hundred and fifty (2750) feet of hardwood lumber for seven hundred and seventy (770.00) pesos, Philippine currency, and had not, on said date, or on any other date, paid to the said Charles A. Jollie the sum of seven hundred and seventy (770.00) pesos, Philippine currency, for said lumber or for any other purpose.

The defendant does not attempt by proof to controvert the facts. The proof shows that this voucher was prepared at the dictation of the defendant and signed by him as alleged in the complaint, and that he forwarded said voucher, together with an abstract of dis-

bursements, to the Auditor of the Philippine Archipelago, and for credit as money disbursed by him for the Civil Government of the Philippine Islands for two thousand seven hundred and fifty (2750) feet of hardwood lumber purchased of Charles A. Jollie. The proof further establishes beyond doubt that the defendant did not purchase said lumber from said Charles A. Jollie or from any other person, and that the statements contained in said voucher were false in every particular and had no foundation in fact, and the whole proof shows that the defendant is guilty of the falsification of the voucher as alleged in the complaint, beyond a reasonable doubt. Said voucher is offered in evidence by the Government and admitted in evidence in the character of Exhibit "A." The abstract enclosed accompanying said voucher to the Auditor for credit to the defendant was offered by the Government and admitted in evidence in the character of Exhibit "B," and shows on its face that the
8 defendant was credited on his account with the Auditor of the Philippine Archipelago with said sum of seven hundred and seventy (770.00) pesos.

Defendant's counsel insists that the defendant should be acquitted under the Federal Constitution for the reasons:

I.

That the defendant is entitled to be tried by jury and on an indictment preferred by grand jury.

Both of these propositions have been settled against the defendant's contention by the Supreme Court of the United States in the case of Fred L. Dorr and Edward F. O'Brien *versus* United States, decided May 31, 1904, reported in advance sheets of Opinions of United States Supreme Court, July 15, 1904, page 808. The Supreme Court of the United States, in a number of well considered opinions, has held that information or complaint as in this case, is due process of law. (Henry Bowln *vs.* State of Nebraska, Book 44, L. E., U. S. Supreme Court, page 382. Charles Maxwell *vs.* George N. Dow, Warden, Utah State Prison, same book, page 597, and authorities cited, page 598. Jack Davis *vs.* James E. Burrick, Sheriff, Book 45, L. E., U. S. Supreme Court Reports, page 249.)

II.

That the defendant was not a public official within the meaning of Article 300 of the Penal Code, under which the complaint in this case was drawn.

The proof shows that on October 8, 1903, defendant addressed a letter to Mr. A. W. Ferguson, Executive Secretary, in which he submitted certain plans, as appears in his said letter, filed in evidence in this case, for the construction of certain buildings at the Louisiana Purchase Exposition of the native material of the
9 Philippine Islands, and estimated the cost to be three thousand dollars ($3000.00) gold. This letter was referred to Honorable William H. Taft, then Governor, and was referred by him to the Exposition Board, and the plans were by the Exposition

Board approved and returned by Governor Taft on October 13, 1903, with the indorsements of approval, to defendant Carrington.

On November 3, 1903, the Philippine Commission passed a resolution directing that three thousand dollars ($3000.00) be placed to the credit of the defendant out of the funds appropriated for the Philippine Exhibit, to be used and accounted for by the defendant in the construction of the Philippine section of the Louisiana Purchase Exposition grounds of a modern administration building of native material, etc., and also authorizing the Civil Governor to designate the defendant as disbursing officer to receive the funds mentioned in the resolution. On the 24th day of November, 1903, Governor Taft addressed the following communication to the defendant:

"SIR: You are hereby designated to withdraw, receive, expend, and account for the funds authorized by resolution of the Commission adopted on November 3, 1903, to be expended in the preparation and display of a Scout Exhibit at the Louisiana Purchase Exposition, as set forth in said resolution."

On the second day of November, 1903, the defendant addressed a letter to the Executive Secretary, the first paragraph of which is as follows:

"Referring to the recent approval of my scheme to make an exhibit at the St. Louis Exposition, and the setting apart of $3000 for construction of building, etc., I have the honor to request that direction be given that the funds be placed to my credit official credit with the Government depository and that the necessary blanks be supplied me for rendering proper account of same."

The last paragraph suggests that an additional five hundred dollars ($500) be placed to his credit to defray the expenses of certain native families expected to attend the St. Louis Exposition. On November 28, 1903, there was drawn by the Governor and Auditor for the Philippine Islands on the Treasurer a draft or warrant for the sum of seven thousand (7,000.00) pesos, Philippine currency, payable to Major F. L. Carrington, Disbursing Officer, Exposition Funds. This draft was presented by the defendant to the Treasurer and that sum, to wit, seven thousand (7,000.00) pesos, was entered to his credit as disbursing officer. At the same time the defendant signed an identification card that is required by the Treasury Department of officials, which reads: "Official signature of F. de L. Carrington, Major, First Infantry, Disbursing Officer." The necessary blanks, vouchers, etc., were furnished to the defendant, and in making up said vouchers, abstracts, etc., were signed by the defendant as disbursing officer. The defendant accepted the position of disbursing officer and held himself out to the people of the Philippine Islands, and to the world, as such disbursing officer.

The defendant's counsel objected to the said resolution passed by

the Commission, and any other papers or documents offered for the purpose of establishing that the defendant was acting in an official capacity, or rather, as a disbursing officer for the Civil Government of the Philippine Islands at the time of the preparation of said vouchers. The Court is satisfied, as a legal proposition, that it was not necessary for the Government to introduce the resolution or the document signed by Governor Taft designating or appointing the defendant to the position of disbursing officer. It would have been sufficient, in the opinion of the Court, for the Government to have shown, by oral testimony, that the defendant was holding himself out to the public as such disbursing officer, and making purchases of materials and otherwise acting as such, and in addition thereto, the vouchers and abstracts and other documents filed as evidence in this case, signed by him as disbursing officer.

"An officer *de facto* is one who exercises an office under color of right by virtue of some appointment or election, or of
11 such acquiescence of the people as will authorize the presumption, at least, of a colorable appointment or election; being distinguished, on the one hand, from a mere usurper of office, and on the other, from an officer *de jure.*" (Wilcox *vs.* Smith, 5 Wend. 231; Plymouth *vs.* Painter, 17 Conn., 585; 1st Greenleaf on Evidence, 16th Edition, section 83; same book, section 563*g* and authorities cited.)

It is earnestly and ably insisted by defendant's counsel that there was no such office existing as defendant is charged with having occupied in making the voucher alleged to have been falsified, and that no such office could be created, and that it was not created by the resolution of the Philippine Commission filed as evidence in this case.

The regularity of appointment to office is not for the protection of the acting officer, but to give verity to his acts in dealing with the public. The public, in dealing with this defendant in purchases that he made as such disbursing officer, felt secure in parting with the property, knowing that he was a representative of the Government, and of the responsibility of the Government for payment.

In my opinion of the law applicable to this case, it is immaterial whether the defendant's appointment as disbursing officer was legal and regular or not. The defendant made application for the position, and was appointed by the Governor of the Philippine Islands by authority of a resolution passed by the Philippine Commission. He accepted the appointment, took charge of the funds, to wit, seven thousand (7,000.00) pesos, Philippine currency, that were turned over to him as such disbursing officer, and there is no doubt but that he was holding the position under color of right, and as such he falsified the voucher as charged in the complaint, and no doubt appropriated the sum of seven hundred and seventy (770) pesos, Philippine currency, the amount set out in the falsified voucher,
12 to his own use, and it is not in his mouth, and he cannot be heard to say, that he was not such disbursing officer.

III.

It is insisted by the defendant's counsel that under section 1222, Revised Statutes of the United States, and section 1860, the defendant could not occupy this office even if such office existed.

The Revised Statutes referred to provide that if an Army officer is elected or appointed to an office in the Civil Government, it vacates his office in the Army. The fact that the defendant's office as major in the United States Army was not declared vacant under said sections of the Revised Statutes, and that his pay continued as such officer, (if such be true, and no doubt it is), could not affect his responsibility as such civil officer. It does not prohibit an Army officer from accepting a civil office.

IV.

It is insisted by defendant's counsel that under Act No. 6. Philippine Commission, the resolution authorizing the Governor to appoint the defendant disbursing officer is void, and that there is no statutory provision creating the office or authorizing the Governor to appoint. I deem it sufficient to say that the same Commission that passed Act No. 6 adopted the resolution authorizing the Governor to appoint the defendant disbursing officer, and in my opinion, any part of Act No. 6 in conflict with said resolution is by implication repealed by said resolution.

V.

It is insisted that this voucher is not a public document. Section 20 of Act No. 90 is as follows:

13 "Accounts of disbursements shall be rendered monthly and transmitted to the Auditor within ten days after the expiration of the month to which they pertain, by the officers and agents authorized to make disbursements, in which such officers or agents shall charge themselves with all moneys advanced to them, respectively, by the Treasurer, and take credit for the disbursements made by them, supported by proper vouchers. An abstract of the disbursements, accompanied by the vouchers therefor, consecutively numbered, shall be transmitted with each account."

The voucher and abstract blanks provided by this section are the ones called for by the defendant upon his appointment, and it is a significant fact that the defendant, in transmitting the vouchers in each of the five cases in which he is indicted for falsification—four others besides this, to wit: Nos. 1836, 1837, 1838 and 1839—refers the Auditor in transmitting the vouchers and abstract to his authority accompanying voucher No. 1, said authority being the resolution of the Commission and appointment by Governor Taft, etc. Article 579 of the Spanish Code of Civil Procedure defines public documents as follows:

"The following are solemn public documents:

"Sub-section 3. Documents issued by public officers in reference to the performance of any of their duties when authority therefor is vested upon them."

So, taking these sections as construed by Viala, Volume 2, page 386, and the Spanish decisions and decisions of our present Supreme Court of these Islands, there can be no doubt but that this voucher is a public document, falling within Article 300 of the Penal Code.

VI.

The Court is requested to state in its finding whether or not the defendant is a Major in the United States Army. The Court cannot know from the proof, whether defendant is now a major or not, but the proof does establish the fact that the defendant held himself out as a major in the United States Army at the time of the commission of the crime charged in the complaint in this case, and he
14 cannot now be heard to say, as a defense to the falsification of the voucher in question as a public officer of the Civil Government, that he was or was not at the time an officer in the United States Army.

VII.

It is insisted that the defendant cannot be convicted on the complaint in this case because it sets out a purported copy of the voucher in the Spanish language, and that the Government does not make out its case by offering in evidence the voucher, which is in English. Section 6 of General Order No. 58 provides that a complaint or information is sufficient if it shows:

1. The name of the defendant, or, if his name cannot be discovered, that he is described under a fictitious name with a statement that his true name is unknown to the informant or official signing the same. His true name may be inserted at any stage of the proceedings instituted against him, whenever ascertained.

2. The designation of the crime or public offense charged.

3. The acts or omission complained of as constituting the crime or public offense in ordinary and concise language, without repetition, not necessarily in the words of the statute, but in such form as to enable a person of common understanding to know what is intended and the court to pronounce judgment according to right.

Section 12 of the Code of Civil Procedure provides Spanish as the official language. The second paragraph provides that a party or his counsel may submit a written or printed pleading or brief in English or a native dialect, if at the same time he accompanies it by a correct Spanish translation.

The complaint in this case is in both the Spanish and English. By comparison, the Spanish and English are the same. It is
15 clear that the rights of the defendant are not prejudiced by setting out in the Spanish complaint filed the voucher translated into the Spanish language. Under General Order No. 58 the complaint is good and the falsified voucher offered by the Government in the English language is admissible.

The Court is satisfied beyond a reasonable doubt that the defendant is guilty as charged in the complaint, and that under the law and facts in this case it is the duty of the Court to so adjudge. It is therefore the judgment of the Court that the defendant be and is

hereby sentenced to be imprisoned in Bilibid Prison for the period of twelve years and one day, and that he pay the costs of this case.

Manila, February 21st, 1905.

(Signed) JOHN C. SWEENEY, *Judge.*

On this 21st day of February, 1905, the preceding decision was read in the presence of the parties at interest.

(Signed) R. HERAS,
Assistant Clerk of the Court of First Instance of Manila.

Which said judgment and sentence was duly recorded.

That thereafter and on the 24th day of February, 1905, an appeal was taken from said verdict and judgment in said Court of First Instance by the said defendant to the Supreme Court of the Philippine Islands, which said appeal was duly perfected.

That thereafter the said cause was duly placed upon hearing in the Supreme Court of the Philippine Islands, and after due argument of counsel on behalf of both the State and the defendant, said defendant was, by the decree and judgment of the said Supreme Court, found guilty of the crime charged against him, and condemned to the punishment of fourteen years eight months and one day of "cadena temporal," to pay a fine of 1250 pesetas, and
16 the costs of this case, as will fully appear by a true and correct copy of said decree and judgment of the said Supreme Court of the Philippine Islands, translated into English, which is as follows:

UNITED STATES OF AMERICA, *Philippine Islands:*

In the Supreme Court of the Philippine Islands.

THE UNITED STATES, Plaintiff and Appellee,
vs.
FRANK DE L. CARRINGTON, Defendant and Appellant.

For Falsification of a Public Document by a Public Official.

March 15, 1906.
General Registry No. 2600.
Book of Decisions 8, F.
Visto: October 17, 1905.
Present: The Hon. President and Justices Torres, Mapa, Johnson, Carson, and Willard.

Decision.

The accused was charged with the crime of falsification of a public document by a public official, in that:

"On or about the 12th day of February, 1904, in the City of Manila, Philippine Islands, the said Frank de L. Carrington, being

then and there a public official of the United States Civil Government of the Philippine Islands, to wit, a duly appointed and commissioned major of the First Infantry, United States Army, and the duly designated, qualified and acting commander of the Provisional Battalion of the Philippine Scouts, and a duly appointed, qualified and acting disbursing officer for public funds of the said United States Civil Government of the Philippine Islands, appropriated on account of said Provisional Battalion and on account of the Louisiana Purchase Exposition at St. Louis, did, willfully, unlawfully, feloniously, corruptly, with abuse of his office and with the intent then and there to deceive and defraud the United States Civil Government of the Philippine Islands and its officials, falsify a public or official document of which he had charge and in which he had intervention by reason of his office, namely, a voucher for the expenditure of public funds, which voucher is in words and figures following, to wit:

Auditor 125.

General Expense Voucher.

Philippine Currency.

(Mexican or United States.)

Appropriation for Exposition Purposes, Act 824 F. Y., 1904.

The Government of the Philippine Archipelago, to Charles A. Jollie, Dr.

17

Date.	Article or service.	Amount.	Remarks.
1904. Jan. 10	2750 ft. Hardwood Lumber @ $280. per M..	770.00	

Authority filed with voucher 1. Abt. Dis. Dec. 1903. (See Note D.)

I certify that the above account is correct and just. The services were rendered as stated and were necessary for the public service. Articles purchased have been taken up in property book of this office and will be accounted for to the Auditor on my return for the period ending March 31, 1904.

(Signed) F. DE L. CARRINGTON,
Maj. 1st Infantry, D. O.

Approved:

(Signed) F. DE L. CARRINGTON,
Maj. 1st Inf. Com'd'g Prov. Batt., N. S.

Received of Maj. F. de L. Carrington, 1st Inf., this 10th day of January, 1904, the sum of seven hundred seventy (770) /100 Dol-

lars, in full payment of above, which I hereby certify to be correct.
Paid by check No. —.
Date ——, 190–.
On —— ——.
In favor of —— ——.
(Signed) CHARLES A. JOLLIE.
(Signature of Creditor.)

In this, that the said Frank de L. Carrington did then and there pervert the truth in the narration of facts contained in said voucher in that he then and there stated, declared and certified that he had, on the 10th day of January, 1904, purchased from Charles A. Jollie two thousand seven hundred fifty (2750) feet of hardwood lumber for seven hundred and seventy (770) pesos, Philippine currency, and that he had on said date paid to the said Charles A. Jollie from public funds the sum of seven hundred seventy (770.00) pesos Philippine currency, and that the said voucher as stated by the said Carrington and as shown above was correct and just, when in truth and in fact the said Frank de L. Carrington did not, on January 10th, 1904, or on any other date, purchase from Charles A. Jollie two thousand seven hundred fifty (2750) feet of hardwood lumber for seven hundred and seventy (770.00) pesos Philippine currency, and had not, on said date, or on any other date, paid to said Charles A. Jollie the sum of seven hundred seventy (770.00) pesos, Philippine currency, for said lumber or for any other purpose.
All contrary to law.
(Signed) WM. W. BARRE.

Subscribed and sworn to before me and in my presence, in the City of Manila, Philippine Islands, this 14th day of October, 1904, by the said Wm. W. Barre.
(Signed) MANUEL ARAULLO,
Court of First Instance,
City of Manila, P. I.

This complaint was filed on October 19, 1904. Subsequent thereto an order of arrest was issued against the accused, who was
18 detained and brought before the Judge on October 21st, 1904, and gave bond for his appearance at the trial of the case.

On November 2, 1904, the accused, through his attorneys, filed the following motion:

"Comes now the defendant by his attorneys and moves the Court that the complaint filed against him in this cause be made more definite and certain in this:

1. That there be stricken out of said complaint all that there is set forth in said complaint relative to the defendant being a major in the United States Army;

2. That there be set forth in the said complaint specifically what office the defendant held under the United States Civil Government in the Philippine Islands, when he was appointed thereto, by whom he was appointed thereto and when he qualified."

On the same day the accused, through his attorneys, presented the following demurrer:

"Comes now the defendant and hereby demurs to the complaint herein filed against him for the following reason:

1. That the facts alleged in the complaint are not sufficient to constitute a public offense."

On December 12, 1904, the Judge of First Instance, after hearing both the attorneys for the accused and the Prosecuting Attorney, denied the said motion and overruled the demurrer. It does not appear from the record that any exception was interposed against this ruling of the court upon said motion and demurrer.

On December 13, 1904 the accused was duly arraigned in the Court of First Instance of the City of Manila, and plead "Not guilty" to the charges alleged against him in the complaint.

The case went to trial in the Court of First Instance of the City of Manila on January 24, 1905. After hearing the evidence adduced at the trial of said cause, the Court declared the accused guilty of the crime charged against him in the complaint, and condemned him to twelve years and one day's imprisonment, together with the costs.

From this decision the accused appealed to this Court.

19 The accused alleges in this instance the following reasons for revoking the sentence appealed from:

"1. That the document which is set forth in the complaint was not falsified;

2. The document inserted in the complaint is not a public document; at least it was not such at the time the accused signed the incorrect certificate which accompanies said document;

3. The document set forth in the complaint was not a public document for not having been issued by a public official.

4. The complaint itself proves that the appellant occupied no civil office;

5. The sentence should also be annulled for the reason that the Supreme Court lacks the legal record of the trial had in the Court of First Instance. It appears that the stenographer took the evidence in English and that it was only translated into Spanish after the trial. The Spanish translation in this Court is not the record of the lower court, and the appellant is without knowledge as to its correctness.

6. The Exhibit "A," the document which the accused is charged with having falsified, must be a public document by reason of pertaining to some office or having been issued, made or executed by a person who was an officer, by reason of which official status of the author the document acquired the nature of a public document.

7. The appellant is an officer of the Army of the United States, and was at the time of the alleged offense in command of a battalion of Philippine Scouts stationed at Caloocan, Rizal Province. The appellant is therefore a federal officer and was at the time of the alleged offense in the Philippine Islands by virtue of superior orders emanating from the President, the constitutional Commander in Chief of the Army of the United States. As a soldier, therefore, the appellant, owing implicit obedience to the President of the United

States, could and would have been brought to the Philippine Islands by military force if he had for any reason refused to come voluntarily in obedience to orders. We must therefore ask the question whether the appellant who must obey the orders of the Commander in Chief by virtue of the provisions of the Constitution is protected wherever he may be by the guaranties of the same Constitution by authority of which his superiors command him.

These distinct reasons give rise in this Court to the following questions:

1. Had the accused, on the date of his arrest, the right to a trial by jury?
2. Was the accused acting as a public official when he committed the act charged to him in the complaint?
3. Was the document of which the complaint speaks a public document?
4. Was the accused guilty of falsification of the document set out in the complaint?

20 The decision rendered in the case brought against Dorr has decided the question as to the right of trial by jury in the Philippine Islands. However, the accused alleges that notwithstanding the fact that citizens of the Philippine Islands have no right to a trial by jury, he himself, as a member of the American Army, and being in the Philippine Islands not by his own desire but by order of the President of the United States, has the right to such a trial. This right is based upon the fact that the accused being obliged to come to the Philippine Islands by virtue of the orders of the President of the United States, does not thereby lose the rights which the Constitution of the United States in that behalf concedes him. In the United States every State of the Union has the right to establish its own system of procedure in both civil and criminal matters, and it has been repeatedly declared, both by the state tribunals and the Supreme Court of the United States, that a State, if it should see fit, could deprive its citizens of the right of trial by jury, notwithstanding the guaranty afforded by the Constitution of the United States. Let up suppose, therefore, that the accused *were* sent by order of the President of the United States to a certain State, in which there was no provision as to trial by jury, and that while there he broke the laws of that State.—Could he insist in the courts of that State,—where there was no provision made for jury trials, that he be tried by jury according to the Constitution of the United States, which does not rule nor has any application in said State? In our opinion, when a citizen, whether a member of the United States Army or no, goes to a certain State or territory of the Union, and breaks the laws thereof, he is subject to be judged in accordance with the rules established in said State or territory, so long as the system of procedure in force in said territory or State be of a just and impartial character. It has also been decided in numerous cases

21 that a State could establish a jury composed of a number of individuals different from that which according to the Constitution of the United States is required in the courts of said States. Again, supposing the accused should be in a State or Territory in

which trials were had by a jury composed of two individuals instead of twelve: Could the accused insist that he be tried by a jury composed of twelve members? In our opinion he could not. The only way to avoid being tried in the courts of the different territories or States in accordance with the rules of procedure in force in said territory or State, is to not violate the laws thereof. So long as a person be in said territory or State, if he violates the provisions of the sovereign power of said territory or State, he is liable to be punished in accordance with the system of procedure governing in said territory or State.

Did the accused act as a public official in committing the acts charged against him in the complaint? Article 300 of the Penal Code says that:

"The public official will be punished with "cadena temporal" and a fine of from 1,250 to 12,500 pesetas, who, with abuse of his office, commits falsity:

1. Imitating or forging hand-writing, signature or rubrica.
2. Making appear in the act the intervention of persons who took no part therein.
3. Attributing to those who took part in the act declarations or manifestations different from those which they actually made.
4. Perverting the truth in the narration of facts.
5. Altering the true dates.
6. Making in the real document any alteration or interlineation which changes its meaning.
7. Issuing a certified copy of a supposed document, or stating in said copy anything contrary to or different from that contained in the true original.
8. Inserting any writing in a protocol, registry or official book."

The accused is said to have committed the crime of falsification as a public official "perverting the truth in the narration of facts" in the document referred to in the complaint. Article 401 of the Penal Code says:

22 "For the purposes of this and the preceding chapters of the present book, every person will be considered a public official who, by direct provision of law, by popular election or appointment by competent authority, takes part in the exercise of public duties."

It is alleged that the accused was appointed by competent authority, and that he took part in the exercise of public duties, and that he should therefore be considered a public official in accordance with Article 300. The following documents set out the facts relative to his appointment:

On October 8, 1903, the accused addressed the following letter to Mr. A. W. Fergusson, Executive Secretary of the Insular Government of the Philippine Islands:

"SIR:—I have the honor to submit the following statement for the consideration of the Civil Governor. As I understand it, the Scout Battalion will be, in a way, a part of the Philippine Exhibit at the Louisiana Purchase Exposition and will be quartered on the site set apart for the Philippine Exhibit. I believe the Battalion is

to be put in tents, but I will require some sort of Administration building in which to conduct the business of the Battalion.

It has occurred to me that a model building of native materials would serve the purpose well and add to the attractiveness of the Philippine section, as I propose to furnish it with native furniture and decorate it with native arms, weapons, wares, &c., and have a room for the reception of Army, Navy and Philippine Civil Officials. I propose to perform all the construction work by the labor of my Scouts after my arrival at St. Louis. As the Exposition will then be open it will give the public an opportunity to see Philippine house building in progress. I estimate that for $3000 gold I will be able to buy the material, furnishings &c. and put it on the ground. It will require from three weeks to a month to construct the building. If the Commission will authorize the transfer to me of the necessary funds from those already appropriated for the Philippine Exhibit I feel sure that there will be no cause to regret the step, and myself and my Battalion officers will be greatly convenienced thereby, while a pleasing addition will be made to the Philippine Exhibit. Early action is requested in order that I may proceed with the collection of materials.

Very respectfully,

(Signed) F. L. CARRINGTON,

Major 1st. Infantry, Commanding Battalion."

On October 9, 1903, the then Civil Governor, William H. Taft, referred said letter to the Exposition Board, earnestly recommending that that asked for in said letter be granted and that the Commission set apart for that object the sum mentioned from the appropriation already made for the Exposition Board.

23 On October 12, 1903, the said Exposition Board accepted the proposition made by the accused in his said letter. This acceptance on the part of the Exposition Board was duly transmitted to the accused on October 13, 1903, by the then Civil Governor, Hon. William H. Taft.

On November 3, 1903, the Honorable Civil Commission of the Philippine Islands decreed the following resolution:

"On Motion, Resolved, That the disbursing officer of the Philippine Exposition Board be and he is hereby authorized and directed to transfer to the credit of Major F. L. Carrington, 1st. United States Infantry, Commanding the Provisional Battalion of Philippine Scouts to be transported to St. Louis in 1904 in connection with the Philippine Exhibit at the Louisiana Purchase Exposition, the sum of $3000.00, United States currency out of the general fund appropriated for the Philippine Exhibit, to be used and accounted for by Major Carrington in the construction by the members of the Battalion in the Philippine section of the Louisiana Purchase Exposition grounds of a model administrative building of native materials in which to conduct the business of the Battalion, exhibit weapons, arms, wares, etc., and to contain a reception room for Army, Navy and Philippine Civil officials; and

"Be it Further Resolved, That the disbursing officer of the Philip-

pine Exposition Board be and he is hereby authorized and directed to deposit to the credit of Major Carrington the further sum of $500.00, United States currency, with which to defray in part the expenses of transportation and maintenance of such families of Scouts as may be given permission to accompany the Battalion to St. Louis: Provided, however, That the foregoing resolutions, together with the correspondence, be forwarded to Don Pedro A. Paterno, member of the Exposition Board, and Señor Leon Guerrero, Secretary of the Board, for their approval and concurrence in these resolutions, or disapproval of the same and the return of all papers to Civil Governor, who may then, if the resolutions be approved, designate Major Carrington as disbursing officer to receive the funds mentioned in these resolutions."

This resolution was transmitted to the said Paterno and Guerrero, who manifested their acceptance of the propositions therein contained in a letter addressed to the Honorable William H. Taft, Civil Governor of the Philippine Islands on November 8, 1903.

In conformity with this acceptance on the part of said Messrs. Paterno and Guerrero, the then Civil Governor, the Honorable William H. Taft, addressed to the accused the following letter on November 24, 1903:

24 "Major Frank de L. Carrington, 1st. U. S. Infantry, Commanding Provisional Battalion, Philippine Scouts, Caloocan, Riza.

SIR: You are hereby designated to withdraw, receive, expend, and account for, the funds authorized by resolution of the Commission adopted on November 3, 1903, to be expended in the preparation and display of a Scout Exhibit at the Louisiana Purchase Exposition as set forth in said resolution.

Very respectfully,
(Signed) WM. H. TAFT,
Civil Governor."

In fulfillment of the authorization granted to the accused by the Commission to use the sum of $3,500 in money of the United States, or $7,000.00, Philippine currency, Mr. Leon M. Guerrero, Secretary of the said Exposition Board, asked the Auditor of the Philippine Islands on November 16, 1903, to place at the disposal of Major F. L. Carrington, in his capacity as Disbursing Officer of the funds of the Exposition, the sum of 7,000*0* pesos which were payable from the funds of the Civil Government of the Philippine Islands as per the appro-riation specified (See minutes of the Philippine Commission of November 3, 1903) for which sum the said disbursing officer would account and respond. This request was duly approved by the Honorable A. L. Lawshe, Auditor of the Philippine Islands, as also by the Honorable Civil Governor William H. Taft, by the Assistant Executive Secretary, Frank W. Carpenter, on November 25, 1903. On the same day, or November 25, 1903, a leter of credit, No. 4194, was issued, transferring the sum of 7,000 pesos, Philippine currency, to the credit of Major F. L. Carrington, Dis-

bursing Officer of Exposition Funds, which letter is drawn up in the following terms:

"To the Treasurer of the Philippine Archipelago:

Pay to Major F. L. Carrington, Disbursing Officer, Exposition Funds, or order, the sum of Seven Thousand pesos, Philippine currency.

(Signed) W. H. TAFT,
Civil Governor.
A. L. LAWSHE, *Auditor.*"

Frank A. Branagan, Treasurer of the Philippine Islands, will pay this warrant."

(Signed) FRANK A. BRANAGAN, *Treasurer.*"

Upon the back of this warrant appears the following endorsement: "For deposit to my official credit.

"MAJOR F. L. CARRINGTON."

25 Official signature,
"F. DE L. CARRINGTON,
Major, 1st. Infantry."

Upon the face of said warrant it appears that the sum mentioned therein was paid by the Treasurer of the Philippine Islands on December 1, 1903.

During the trial of said cause various expense vouchers were presented in evidence, as was also a check Numbered 173,001, and an account rendered by the accused for the month of January, 1904, showing the disbursements made by the said accused from the said money transferred to his account. Each of said documents was signed by the accused, with the object of bearing out the official character which he assumed upon signing said vouchers, the check and the account. It has been proven that his signature to each one of these documents was authentic. Each of the signatures was as follows:

"F. de L. Carrington, Major, 1st. Infantry, D. O."

It was proven by competent authority during the trial of the cause that it was customary for disbursing officers to indicate their official character as such by means of the letters "D. O." (Disbursing Officer).

The aforementioned resolution of the Philippine Commission of the United States and the appointment of the accused by the Governor in compliance therewith, and the acceptance of the office by the accused, as also his having actually performed the duties imposed upon him by said office, had the effect of a law creating the office of disbursing officer of the funds thus designated and for the objects mentioned in said resolution. No more effect could have been given to a law of the Commission.

From all the foregoing facts we are convinced and declare proven that the accused acted as a public official and took part in the performance of public duties. U. S. *vs.* Sarmiento, 1 Jur. Fil., 504.

26 "Was the document to which the complaint refers a public document?"

The document to which the complaint refers and which is said to have been falsified by the accused, was written on a form entitled "general expense voucher," and known as "Auditor 125." It was proven during the trial of this cause that this form "general expense voucher" was that on which disbursing officers were required to render their reports of disbursements of public funds.

Paragraph 12, Article 1 of Act 90 of the United States Philippine Commission, authorizes the Auditor of the Philippine Islands to establish rules and regulations and provide forms for the rendition of accounts of money spent by disbursing officers, as he may deem convenient and necessary. Said article is of the following tenor:

"Rule 12. The Auditor will prescribe * * * the forms for keeping and rendering all accounts subject to his examination" etc.

We are of the opinion and so declare that the document set out in the complaint and which is said to have been falsified by the accused, was a public document, according to Article 1216 of the Civil Code.

Was the accused guilty of falsification of the document set out in the complaint? The accused certified that the account contained in the document on which the complaint was based was correct and just; that the services were rendered as stated in said account and that said services were necessary for the government; that the articles purchased had been taken up in the property book of his office, and that he would render account therefor to the Auditor for the period ending March 31, 1904. In said document it was stated that on January 10, 1904 the accused had purchased from one Charles A. Jollie 2750 feet of lumber for construction at $280.00 per thousand feet,

27 which amounted to 770 pesos, Philippine currency. The accused certified this fact. It results beyond a doubt from the evidence that the accused did not buy this lumber, as he states, from Mr. Jollie on January 10, 1904, nor any other quantity on any other date. We therefore declare that the accused is guilty of the crime of falsification of a public document by a public official, and he should be punished according to Article 300 of the Penal Code. There having been no attenuating or aggravating circumstance in the commission of the crime, it is proper to impose upon the accused the medium degree of the punishment of cadena temporal. (Par. 1, Art. 81.)

We therefore modify the sentence below and condemn the accused to fourteen years, eight months and one day of "cadena temporal," and to a fine of 1250 pesetas, together with the costs.

Thus ordered.

(Signed) E. FINLEY JOHNSON.

We concur:

(Signed) C. S. ARELLANO.
FLORENTINO TORRES,
VICTORINO MAPA.
A. C. CARSON.
CHARLES A. WILLARD.

To which judgment the defendant duly excepted.

That thereafter and on the 22nd day of March, 1906, a petition and motion for a new trial and rehearing in said Supreme Court of the Philippine Islands was made by Messrs. Hartigan, Rohde & Gutierrez, attorneys for the said accused, which said motion and petition is as follows:

UNITED STATES OF AMERICA, *Philippine Islands:*

In the Supreme Court of the Philippine Islands.

THE UNITED STATES
vs.
FRANK DE L. CARRINGTON.

28 Comes now the defendant in the above entitled action and respectfully petitions the Honorable Supreme Court for a rehearing on the following grounds:

I.

It was contended by the defendant in his brief filed in this cause that he, being an officer in the Army of the United States, could not holf a civil office under the Government of the Philippine Islands. This contention of the defendant was based especially upon Paragraph 4 of Section 1860 of the Revised Statutes of the United States.

The Honorable Supreme Court in its decision has not even made mention of said contention or the Statute of the United States.

II.

It was contended by the defendant in his brief filed in this cause that he, being an officer in the Army of the United States and being in the Philippine Islands by virtue of Military orders, could not be tried on a criminal charge in a civil court except by a jury, as guaranteed by the Constitution of the United States.

The Honorable Supreme Court in its decision of this question holds that the case of the United States *versus* Dorr is decisive thereof. The defendant, in his brief, filed in this cause, distinguishes between his situation and that of the people of the Philippine Islands or civilians voluntarily in these Islands.

The Honorable Supreme Court in its decision does not assign any reason why this distinction should not be made between persons voluntarily in a territory of the United States and persons in such territory by virtue of military orders. In this behalf the situation of a military officer within one of the States of the United
29 States is not similar to the situation of a military officer within a territory of the United States, for the reason that the State being sovereign and one of the integral parts of the Union, has the constitutional right to provide its own legislation relating to criminal procedure.

III.

It appears from the records in the five criminal cases against Major Carrington, by stipulation of the Honorable Attorney-Gen-

eral and Counsel for the Defendant, were tried together as one case in the Supreme Court, that Major Carrington was convicted of an offence or offences which caused no one injury or could cause no one injury, excepting the Civil Government of the Philippine Islands, and only injured the said Government in the sum of three thousand pesos.

We respectfully submit that in view of these facts the punishment inflicted upon Major Carrington is cruel and unusual and for that reason the judgment should be reversed and set aside, and a new hearing granted.

Manila, March 21, 1906.

(Signed) HARTIGAN, ROHDE & GUTIERREZ,
Attorneys for Defendant.

Which said motion and petition was on March 24, 1906, denied and overruled by the said Supreme Court.

That thereafter and on the 26th day of March, 1906, a petition for a writ of error to the Supreme Court of the United States was filed in said Court by Hartigan, Rohde & Gutierrez, attorneys for said defendant, which said petition is as follows:

30 UNITED STATES OF AMERICA, *Philippine Islands:*

In the Supreme Court of the Philippine Islands.

No. 2600.

FRANK DE L. CARRINGTON, Plaintiff in Error,
vs.
THE UNITED STATES, Defendant in Error.

At Law.

Petition for Writ of Error.

And now comes Frank de L. Carrington, defendant and appellant herein, and says that on or about the fifteenth day of March, 1906, the Supreme Court of the Philippine Islands entered a judgment herein against the defendant and appellant in which judgment and proceedings had prior thereto in this cause certain errors were committed to the prejudice of this defendant and appellant, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore the defendant and appellant prays that a writ of error may issue in that behalf out of the Supreme Court of the United States for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this case, duly authenticated, may be sent to the Supreme Court of the United States.

Manila, March 26, 1906.

HARTIGAN, ROHDE & GUTIERREZ,
Attorneys for Defendant and Appellant.

That thereafter and on the same 26th day of March, 1906, an assignment of errors was duly filed in said Supreme Court by said defendant, through his said attorneys, which said assignment of errors is as follows:

31 UNITED STATES OF AMERICA, *Philippine Islands:*

In the Supreme Court of the Philippine Islands.

No. 2600.

FRANK DE L. CARRINGTON, Plaintiff in Error,
vs.
THE UNITED STATES, Defendant in Error.

At Law.

The defendant in this action, in connection with his petition for a writ of error, makes the following assignment of errors which he avers occurred upon the trial of this cause, to-wit:

I.

The Court erred in holding that there was or is a disbursing office for public funds of the United States Civil Government of the Philippine Islands appropriated on account of the Provisional Exposition at St. Louis.

II.

The Court erred in holding that the defendant was a duly appointed, qualified and acting disbursing officer for public funds of the United States Civil Government of the Philippine Islands appropriated on account of the Provisional Exposition at St. Louis.

III.

The Court erred in holding that the defendant, though an officer of the Army of the United States, was nevertheless a civil officer of the Government of the Philippine Islands, notwithstanding Section 1222 and Paragraph 4 of Section 1860 of the Revised Statutes of the United States.

32 IV.

The Court erred in holding that the defendant, though an officer of the Army of the United States and being at the time of the acts and matters complained of against him in the Philippine Islands by virtue of military orders, could nevertheless be tried by the civil courts of the Philippine Islands without a jury, notwithstanding Section 2, Article 3, and Articles 5 and 6 of the Amendments of the Constitution of the United States of America.

V.

The Court erred in holding that the facts stated in the complaint against the defendant constitute a crime or public offence.

VI.

The Court erred in holding that the punishment inflicted upon the defendant is not a cruel and unusual punishment, contrary to Article VIII of the Constitution of the United States of America.

VII.

The Court erred in holding that the defendant is guilty of the crime of falsification of a public document by a public functionary.

VIII.

The Court erred in holding that the defendant was guaranteed a speedy and public impartial trial, notwithstanding that the defendant, under the laws of the Philippine Islands, cannot move for a change of venue or recuse the judge by whom he is tried; even though he be the defendant's personal enemy.

33 Wherefore the defendant prays that the judgment of the Supreme Court of the Philippine Islands affirming and modifying the judgment of the Court of First Instance of the City of Manila, may be reversed, and the defendant dismissed.

Manila, March 26, 1906.

HARTIGAN, ROHDE & GUTIERREZ,
Attorneys for the Defendant.

That thereafter and on the 26th day of March, 1906, said petition for a writ of error to the Supreme Court of the United States was granted by the Supreme Court of the Philippine Islands, and the amount of the supersedeas bond was fixed at Three Thousand Dollars, United States currency, as appears by the order of said Court, of which a true copy is as follows:

UNITED STATES OF AMERICA, *Philippine Islands:*

In the Supreme Court of the Philippine Islands.

FRANK DE L. CARRINGTON, Plaintiff in Error,
vs.
THE UNITED STATES, Defendant in Error.

At Law.

This 26th day of March, 1906, comes the defendant and appellant herein by his attorneys and files herein and presents to the Court his petition praying for the allowance of a writ of error and an assignment of the errors intended to be urged by him, praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as are proper in the premises.

On consideration whereof the Court allows the writ of error upon

the defendant and appellant giving a bond according to law
34 in the sum of Three Thousand dollars, U. S. currency, which will operate as a supersedeas bond.

(Signed) E. FINLEY JOHNSON,
Associate Justice, Supreme Court.

No. 2601.

UNITED STATES OF AMERICA, *ss.*:

The President of the United States of America to the Judges of the Supreme Court of the Philippine Islands, Greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is now depending in the said Supreme Court of the Philippine Islands, before you, between the United States of America, plaintiff, and Frank de L. Carrington, defendant, a manifest error has happened to the great damage of the said Frank de L. Carrington, as by his complaint appears, We, being willing that the error, if any has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at the City of Washington on the 10th day of July, next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 26th day of March, in the year of Our Lord one thousand nine hundred and six, and of the Independence of the United States of America one hundred and twenty-nine.

(S'g'd) J. E. BLANCO,
Clerk of the Supreme Court of the Philippine Islands.

Allowed by:
E. FINLEY JOHNSON (S'g'd),
Associate Justice.

35 That thereafter and on the twenty-sixth day of March, 1906, a citation was duly issued by the said Supreme Court of the Philippine Islands, a true copy of which is as follows:

UNITED STATES OF AMERICA, *Philippine Islands:*

In the Supreme Court of the Philippine Islands.

THE UNITED STATES OF AMERICA, *ss:*

To Lebbeus R. Wilfley, Esquire, Attorney-General of the Philippine Islands, Attorney for the United States and of the United States of America, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at the City of Washington on the 10th day of July, 1906, pursuant to a writ of error filed in the Clerk's office of the Supreme Court of the Philippine Islands, wherein Frank de L. Carrington is plaintiff and the United States is defendant in error, to show cause, if any there be, why the judgment rendered against the plaintiff in error, as in said writ of error mentioned, should not be corrected, and speedy justice done to the parties in that behalf.

Given under my hand at the City of Manila, Philippine Islands, in the year of Our Lord one thousand nine hundred and six, the 26th day of March.

(Signed) E. FINLEY JOHNSON,
Associate Justice of the Supreme Court of the Philippine Islands.

Service of citation is hereby acknowledged. March 28th, 1906.
(Signed) L. R. WILFLEY,
Attorney General.

36 That thereafter and on the 27th day of March, 1906, the defendant presented bond in the said sum of Three Thousand Dollars ($3000.00), money of the United States, which said bond was on the 28th day of March, 1906, approved by the Honorable E. Finley Johnson, Associate Justice of the Supreme Court of the Philippine Islands, and a true copy of which bond is as follows:

UNITED STATES OF AMERICA, *Philippine Islands:*

In the Supreme Court of the Philippine Islands.

At Law.

FRANK DE L. CARRINGTON Plaintiff in Error,
vs.
THE UNITED STATES, Defendant in Error.

Bond.

Know all men by these presents: That we, Frank de L. Carrington, as principal, and B. W. Cadwallader, J. L. Pierce, H. E. Heacock, E. E. Elser, Wm. Van Buskirk, Daniel Beck and Dr. H. D.

Kneedler, as sureties, are held and firmly bound unto the United States of America in the sum of Three Thousand Dollars, money of the United States, to which payment, well and truly to be made, we jointly and severally bind ourselves, and our and each of our heirs, executors, administrators and assigns firmly by these presents.

Sealed with our seals and dated this 27th day of March, A. D. 1906.

The condition of this obligation is such that, whereas, the above named Frank de L. Carrington has sued out a writ of error to the Supreme Court of the United States to reverse the judgment in the above entitled cause, heretofore rendered by the Supreme Court of the Philippine Islands, Now therefore, if the said Frank de L. Carrington shall prosecute said writ of error to effect and answer and surrender himself in conformity with the judgment heretofore rendered by the Supreme Court of the Philippine Islands in said cause, should the same be affirmed or found without error by the Supreme Court of the United States; or said writ of error dismissed; then and in that event, this obligation shall be null and void, otherwise to remain in full force and virtue.

(S'g'd) F. DE L. CARRINGTON.
WM. VAN BUSKIRK.
D. BECK.
H. D. KNEEDLER.

(S'g'd) B. W. CADWALLADER.
H. E. HEACOCK.
E. E. ELSER.

37 UNITED STATES OF AMERICA, *Philippine Islands, ss:*

B. W. Cadwallader, J. L. Pierce, H. E. Heacock, E. E. Elser, Wm. Van Buskirk, Daniel Beck and Dr. H. D. Kneedler, came before me personally and being first duly sworn, each for himself deposes and says that he is a resident and freeholder in the Philippine Islands, and worth the sum of Three Thousand Dollars, exclusive of debts and liabilities, and over and above his property exempt from execution.

(Signed) B. W. CADWALLADER.
H. E. HEACOCK.
E. E. ELSER.
WM. VAN BUSKIRK.
D. BECK.
H. D. KNEEDLER.

Sworn to and subscribed before me this 27th day of March, 1906. Mr. Kneedler was sworn March 28, 1906, at 11.15 a. m.

(Signed) J. E. BLANCO,
Clerk of the Supreme Court of the Philippine Islands, ex-Officio Notary Public..

Approved:
(Signed) E. FINLEY JOHNSON,
Associate Justice Supreme Court.

UNITED STATES OF AMERICA, *Philippine Islands, ss:*

I hereby certify that the above record and stipulations hereto attached, consisting of thirty-seven typewritten pages, is a true and correct record of the proceedings had in the Court of First Instance of the City of Manila and the Supreme Court of the Philippine Islands in the above entitled cause, as agreed upon between the parties to said cause, and that the same was compiled by me in conformity with the expressed desire and instructions of the said parties to said cause, acting through their respective counsel.

In witness whereof I have hereunto set my hand and caused to be affixed the seal of the Supreme Court of the Philippine Islands this 26th day of May, 1906.

[Seal Corte Suprema, Islas Filipinas.]

H. D. McGEORGE,
Deputy Clerk of the Supreme Court of the Philippine Islands, in Charge.

38 UNITED STATES OF AMERICA, *Philippine Islands:*

In the Supreme Court of the United States.

No. 2600.

FRANK DE L. CARRINGTON Plaintiff in Error,
vs.
THE UNITED STATES, Defendant in Error.

Stipulation.

Whereas, The record in the above entitled cause is of great length, and,

Whereas, In the judgment of the parties to this cause only certain portions of said record are essential and necessary to be transmitted by the Clerk of the Supreme Court of the Philippine Islands to the Clerk of the Supreme Court of the United States in order that the said Supreme Court of the United States may justly and truly determine the points raised by the writ of error and assignment of errors in this cause, and,

Whereas, The record of this cause, consisting of thirty-seven typewritten pages, has been compiled by the Clerk of the Supreme Court of the Philippine Islands, in conformity with the agreement of the parties hereto, taking out and excerpting from said record only such parts thereof as are in the judgment of the parties hereto essential and necessary for the just determination of this cause by the Supreme Court of the United States,

Now therefore, It is hereby stipulated and agreed by and
39 between the parties hereto, Frank de L. Carrington, plaintiff in error, by Hartigan, Rohde & Gutierrez, his attorneys, and the United States of America, defendant in error, by the Honorable Lebbeus R. Wilfley, Attorney-General of the Philippine Islands and attorney for said defendant in error, that the above record, consisting of thirty-seven typewritten pages, shall be and is hereby

settled and agreed upon between the parties to this cause as a true and correct record to be transmitted by the Clerk of the Supreme Court of the Philippine Islands to the Clerk of the Supreme Court of the United States, and that the said described record is and shall constitute the full and complete record in the above entitled cause to be presented to the Supreme Court of the United States for its adjudication and final action.

In Witness whereof, the parties hereto have hereunto set their hands at the City of Manila, Philippine Islands, this 26th day of May, A. D. 1906.

HARTIGAN, ROHDE & GUTIERREZ,
Attorneys for Plaintiff in Error.
LEBBEUS R. WILFLEY,
Attorney for Defendant in Error.

40 UNITED STATES OF AMERICA, *Philippine Islands:*

In the Supreme Court of the United States.

FRANK DE L. CARRINGTON, Plaintiff in Error,
vs.
THE UNITED STATES, Defendant in Error.

Stipulation.

Whereas, In the three criminal causes decided by the Supreme Court of the Philippine Islands, wherein the United States of America is plaintiff and Frank de L. Carrington is defendant, now pending in the Supreme Court of the United States of America on writ of error to said Supreme Court of the Philippine Islands, there are only questions of law submitted to the Supreme Court of the United States for its decision, and

Whereas, The said causes were consolidated for trial in the said Supreme Court of the Philippine Islands for the reason that the questions arising in said causes are identical,

Now therefore, It is hereby agreed by and between the plaintiff in error, Frank de L. Carrington, represented by his counsel, Hartigan, Rohde & Gutierrez, and the Honorable Lebbeus R. Wilfley, Attorney-General of the Philippine Islands and attorney for the United States of America in said causes, numbered respectively
41 2600, 2601 and 2602 in the records of the Supreme Court of the Philippine Islands, be consolidated for trial in the Supreme Court of the United States, and that the record be printed and briefs filed in the cause numbered 2600 only.

Manila, May 26, 1906.

HARTIGAN, ROHDE & GUTIERREZ,
Counsel for Plaintiff in Error.
LEBBEUS R. WILFLEY,
Attorney-General of the Philippine Islands.

Endorsed on cover: File No. 20,562. Philippine Islands supreme court. Term No. 597. Frank de L. Carrington, plaintiff in error, *vs.* The United States. Filed February 5th, 1907. File No. 20,562.

In the Supreme Court of the United States

OCTOBER TERM, 1906

FRANK DE L. CARRINGTON, PLAINTIFF IN ERROR,

v.

THE UNITED STATES.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS

Argument of Plaintiff in Error on Motions to Dismiss or Affirm; or to Advance

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R. A. BALLINGER,
Counsel for Plaintiff in Error.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1906

FRANK DE L. CARRINGTON, PLAINTIFF IN ERROR,

v.

THE UNITED STATES.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS

Argument of Plaintiff in Error on Motions to Dismiss or Affirm; or to Advance

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THE MOTIONS TO DISMISS OR AFFIRM.

The decisions of this Court cited by counsel for the Government show that in cases where there is no doubt as to the jurisdiction of this Court that no case will be dismissed as without color unless it is apparent that the writ of error was taken solely for delay, and especially is this true where the questions which give this Court jurisdiction were raised in the lower Court. In these cases there can be no question of the jurisdiction and it will, therefore, only be necessary to demonstrate that the specifications of error advance some question that is worthy of consideration, or rather it is incumbent on the movant to show that they do not advance such a ques-

tion, for it must be presumed that the writ of error was applied for in good faith.

The errors assigned give rise to the following questions which give this Court jurisdiction:

1. The defendant, now plaintiff in error, contends that, being an officer of the Army of the United States, he could not have held the alleged civil office, even though such a one as that alleged in the complaint existed, by reason of section 1222 and paragraph 4 of section 1860 of the Revised Statutes of the United States.

This question was raised before the trial Court and again in the Supreme Court of the Philippine Islands. (Pages 9 and 19.)

Section 1222 of the Revised Statutes is as follows:

"No officer of the Army on the active list shall hold any civil office whether by election or appointment and every such officer who accepts or exercises the functions of a civil office shall thereby cease to be an officer of the Army and his commission shall be thereby vacated."

Paragraph 4 of section 1860 of the Revised Statutes provides:

"No person belonging to the Army or Navy shall be eligible to hold any civil office or appointment in any territory."

It would have been necessary for the defendant to have been the civil officer alleged in the complaint or that he exercised the functions of such civil office in order that he be guilty as charged in the complaint.

It has been repeatedly held that an officer of the Army may accept or perform other employment not connected with his military office but the acceptance of such employment or detail does not make him in any sense a civil officer, on the contrary he cannot be such, nor can he perform the functions of a civil office as such, and all the time he may be so employed he is officially responsible only as an officer of the United States Army. If it should be contended that the document is an official document by reason of having been issued by the defendant as an Army officer, then the Court of First Instance of Manila had no jurisdiction to try him for the offense.

United States v. Hartwell, 6 Wall, 385;
United States v. Morris, 2 Brock, 96;
Cunningham v. Nagle, 135 U. S. 1;
In re Bonner, 151 U. S. 243;
Minnesota v. Brundage, 180 U. S. 499.

2. The plaintiff in error was an officer of the Army of the United States and, being in the Islands not from his own volition but by virtue of the orders of his superior, he was entitled to a trial by jury as guaranteed by section 2 of article III of the Constitution and by article VI of the amendments to the Constitution of the United States.

This question was raised before the trial Court and again before the Supreme Court of the Philippine Islands (pages 9 and 15 of the Record).

In the decision in the case of *Dorr v. U. S.*, 195 U. S. 138, the Court announces the following question:

"For this case the particular question is, must Congress, in establishing a system of trial of crime and offenses committed in the Philippine Islands, carry to their people by proper affirmative legislation a system of trial by jury?"

This question the Court decided in the negative. But, it is contended that the plaintiff in error is in a different position from that of the citizens of the islands, or from civilian Americans who voluntarily place themselves under the jurisdiction of the laws of the Islands, by reason of his vocation as an Army officer. It must be further considered that in this instance he is prosecuted, not by any distinct government of a state or territory, but is prosecuted in the name of the United States.

3. The punishment inflicted upon the defendant is a cruel and unusual one contrary to the provisions of article VIII of the Amendments to the Constitution of the United States.

This question was not raised in the Court below for the reason that the defendant could not have known the punishment to be inflicted until after conviction and sentence, and under the laws of the Philippine Islands the Supreme Court had power to either increase or diminish the sentence.

We find that in case No. 597 upon examination of the record that the only harm that could have resulted

from the act was the loss of $385 to the Government of the Philippine Islands and we find the defendant sentenced to a term of fourteen years eight months and one day and a fine. The other two cases are analagous, the loss in all being some $1500, and for the three he is sentenced for a period of forty years at hard labor, that being the maximum term of imprisonment, under paragraph 2 of article 88 of the Penal Code.

It is submitted that a term of forty years' imprisonment is such an excessive punishment as to be cruel and unusual.

In *Pervear v. Commonwealth*, 5 Wall, 475, and *O'Neill v. Vermont*, 144 U. S. 323, the Court intimated that a punishment could be excessive so as to make it cruel and unusual within the meaning of article VIII.

4. The laws of criminal procedure of the Philippine Islands fail to provide either for a trial by jury or for a change of venue and there are not sufficient safeguards provided in those laws to guarantee a just and impartial trial. If the right to a change of venue is one of the necessary safeguards to insure a just and impartial trial where a jury trial is provided, such a provision would certainly be the more necessary where the trial judge passes upon both questions of law and questions of fact. There is nothing in the laws of the procedure under which the plaintiff in error was tried to prevent an accused from being tried by his personal enemy. It is submitted

that a system of procedure where neither a trial by jury nor a right to a change of venue is provided is too far removed from the fundamental principles of American jurisprudence to make a conviction thereunder valid. The right to a fair and impartial trial would seem too fundamental to be dispensed with in any territory of the United States.

5. It is by virtue of the Constitution of the United States and of the law of Congress of July 1, 1902, 32 Stat. at L. 691, that the plaintiff is prosecuted, and, further, he is prosecuted in the name of the United States. The Penal Code of the Philippines is in effect a statute of the United States, and the Philippines Bill provides for prosecutions in the name of the United States.

It would seem that any one of the foregoing questions, which with others are all more fully discussed in the brief of plaintiff in error filed herewith, which are all raised by the assignments of error, and none of which have been definitely decided, would be sufficient to give jurisdiction and would be worthy of the consideration of this Court.

It is respectfully submitted that the motions to dismiss or affirm should be denied.

THE MOTIONS TO ADVANCE.

The brief of plaintiff in error in case No. 597, the decision in which by stipulation is to govern cases 598 and 599, is filed herewith and there is no objection to these cases being set for hearing at the earliest convenience of the Court.

Respectfully submitted,

R. A. BALLINGER,

Counsel for Plaintiff in Error.

Office Supreme Court, U. S.
FILED.
NOV 25 1907
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 223.

FRANK DE L. CARRINGTON, PLAINTIFF IN ERROR,

v.

THE UNITED STATES.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR THE PLAINTIFF IN ERROR.

HOLMES CONRAD,
For Plaintiff in Error.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 28695

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 223.

FRANK DE L. CARRINGTON, PLAINTIFF IN ERROR,

v.

THE UNITED STATES.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR THE PLAINTIFF IN ERROR.

The Case.

On October 21, 1904, Frank de L. Carrington, the above-described plaintiff in error, was a duly commissioned officer in the United States Army, holding the rank and station of major of the First regiment of U. S. infantry, and was on duty as such, under the orders of the Secretary of War or of the President of the United States, as Commander-in-Chief of the Army, in the Philippine Islands.

On the date above stated Major Carrington was arrested and held to bail on a warrant issued by Manuel Araullo, judge of the Court of First Instance of the City of Manila, Sala; which warrant charged him "with the crime of falsification of a public document by a public official" (Rec., p. 3).

This warrant appears to have been issued on a complaint in writing, made and signed by Wm. W. Barre, which charges—

> "That on or about the 12th day of February, 1904, in the city of Manila, Philippine Islands, the said Frank de L. Carrington, being then and there a public official of the United States civil government of the Philippine Islands, viz., a duly appointed and commissioned major of the First infantry, United States Army, and the duly designated, qualified and acting commander of the provisional battalion of the Philippine scouts, and a duly appointed, qualified and acting disbursing officer of the public funds of the said United States civil government of the Philippine Islands, appropriated on account of the said provisional battalion, and on account of the Louisiana Purchase Exposition at Saint Louis, did wilfully, unlawfully, feloniously, corruptly, with abuse of his office, and with intent then and there to deceive and defraud the United States civil government of the Philippine Islands, and its officials, falsify a public or official document, namely, a voucher for the expenditure of public funds, which voucher is in the words and figures following, viz.," &c.

On this charge the plaintiff in error was tried in the Court of First Instance in the city of Manila, and on the 21st day of February, 1905, by said court was sentenced "to be imprisoned in Bilidid prison for the period of twelve years and one day, and that he pay the costs of this case" (Record, pp. 10, 11). From this judgment and sentence an appeal was taken to the Supreme Court of the Philippine Islands, and by that court he was, on the 17th of October, 1905,—

> "found guilty of the crime charged against him, and condemned to the punishment of fourteen years eight months and one day of 'cadena tempora'; to pay a fine of 1,250 pesetas, and that he pay the costs of this case" (Record, p. 11).

(It appears from a stipulation in this Record (page 29) that there were two other cases in which this plaintiff in error had been charged, tried, and convicted, in the same courts, for falsifying public documents in this same employment and transaction, the records of which are in the clerk's office of this court, but which two cases it is agreed shall abide the judgment in this case. I am informed, but have not verified the information, that the aggregate of the sentences imposed amount to forty years' imprisonment.)

To have the judgment above recited reviewed and reversed, the case is here on writ of error to the Supreme Court of the Philippine Islands.

For grounds of error in the judgment complained of, the plaintiff in error assigns the following, viz:

1. It appears from the record that the plaintiff in error was not on the 12th of February, 1904, or at any other time, "a public officer of the United States civil government of the Philippine Islands, and that he was not a duly appointed, qualified, and acting disbursing officer for public funds of the said United States civil government of the Philippine Islands, appropriated on account of said provisional battalion, and on account of the Louisiana Exposition at St. Louis."

2. It appears from the record that plaintiff in error was designated to receive the fund referred to in these proceedings, and that he did receive such fund, if at all, exclusively and entirely in his capacity as major of the First United States infantry, United States Army, and if guilty of dereliction of duty with respect to his accounts and vouchers, it was only of his official duty as a major in the United States Army and not as an official of the civil government of the Philippine Islands.

3. While holding the office of major of the First infantry, United States Army, and while on duty as such officer,

under the assignment and orders of his superior officers, he was not amenable to the courts or subject to the laws of the civil government of the Philippine Islands for any offense committed by him arising out of or connected with the performance of his duties as a major of infantry in the United States Army.

4. That he, being a commissioned officer of the United States Army, stationed in the Philippine Islands by the authority of Constitution and laws of the United States and under the orders of his superior officers, and being a citizen of the United States and having his domicil therein, was entitled to, and should not have been deprived of, his constitutional right to a trial by jury.

5. That the punishment to which he was sentenced by the civil courts of the Philippine Islands was a cruel and unusual punishment, within the meaning and the prohibition of the Constitution of the United States.

ARGUMENT.

The accused was not a "public official of the United States civil government of the Philippine Islands" at any time.

He was not, because he *could not* accept or hold, such an office under the laws of the United States, which provide as follows, viz.:

> "No person belonging to the Army or Navy shall be elected to or *hold any civil office or appointment* in any Territory, except officers of the Army on the retired list."
>
> 22 Sts., L., p. 567.
>
> 1st Supp'l R. S., chap. 124, p. 412.

This act is said, in the margin of the Supplement, to have been intended as a substitute for section 1222, Revised Statutes. It omits the provision that an acceptance of a civil office shall vacate the military office.

True, the civil court of the Philippines, in its opinion (Record, p. 9, sec. 111), declares that the statute "does not prohibit any Army officer from accepting a civil office," but we must assume that the court did not know of the existence of this statute.

The accused was not "duly appointed, qualified, and acting disbursing officer for public funds of the United States civil government of the Philippine Islands," as charged in the complaint. He was not "appointed" to any such office.

The letter of November 24, 1903, from "Wm. H. Taft, civil governor," was addressed to "Major Frank de L. Carrington, 1st U. S. Infantry, commanding, &c.," and is as follows:

> "SIR: You are hereby *designated* to withdraw, receive, expend, and account for the funds authorized by resolution of the commissioners," &c., &c. (Rec., p. 18).

He was "designated" in the character in which he was addressed, *i. e.*, as major 1st U. S. infantry. In that character and capacity alone was he authorized to receive and expend the fund. It was in virtue of the office which he held, and by the title of which he was addressed that the duty was laid upon him. He was not *appointed*, but being already in office, he was *designated*—that is, he was indicated, pointed out, selected, singled out from. He was already in a class, and needed not to be appointed to that class, but from that class he was chosen by specific designation to perform certain duties. In military phrase, he was "detailed, assigned." Etymologically, one may be *designated* from a class or *assigned* to a class. In neither case can he be said to be *appointed* to or from such class.

He did never *qualify* as such official. By qualification in or for an office one must take an oath of office and give bond for the faithful discharge of the duties of such office. Nothing of the sort appears to have been done here. No such office is shown to have existed as the one to which it is

charged that this man was appointed and to which he had qualified himself.

In *United States v. Hartwell, 6 Wall., 385,* it was said that "an office is a public station or employment, conferred by the appointment of government. The term embraces the ideas of tenure, duration, emolument and duty"; and in *United States v. Maurice, 2 Brock, 96,* Chief Justice Marshall said: "Although an office is an employment, it does not follow that every employment is an office."

If this was an "office" to which Carrington was "appointed," pray what was its tenure? How and by whom or where was it fixed? What was its duration? At whose will could it be determined? What were its emoluments? Can it be pretended that it added one dollar to his fixed pay as a major of infantry, U. S. A.?

The charge against this man is *official* misconduct, "abuse of his office." To sustain this criminal charge, there must be shown, first, that *there was such an office,* as that which he is charged with having held; secondly, that he was duly *appointed* to that office; thirdly, that he *qualified* as such officer; fourthly, that he actually *held that office* under such appointment and qualification; and, fifthly, that the "abuse of his office" with which he is charged, viz., that he did "falsify a public or official document of which he had charge," is an offense known to the common law, or the statute law, or even to the Philippine law.

> "The law of our country takes care—or should take care—that not the weight of a judge's finger shall fall upon any one except as specifically authorized. A rigid adherence to this doctrine will give far greater security and safety to the citizen than permitting the exercise of an unlimited discretion on the part of the courts in the imposition of punishments, as to their extent or as to the mode or place of their execution," &c.
>
> *In re Bonner, 151 U. S., 259.*

Major Carrington was not charged with having stolen or embezzled money, or having appropriated to his own personal uses public money entrusted to him for public purposes. The charge against him, on which he was tried and convicted and for which he was sentenced to forty years' imprisonment, was that—

> "he, being then and there a public official of the United States civil government of the Philippine Islands, did falsify a public or official document of which he had charge," &c.

Whatever these words may have been intended to express—and their meaning is far from intelligible—they certainly do not state any criminal offense known to the common law, or to the statute law of the United States, or—so far as this record discloses—any municipal law of Manila or territorial law of the Philippine Islands. In the opinion of the civil courts of the Philippines, before which this man was tried, there are copious extracts given from what are called "Acts of the Philippine Commission" (Record, pp. 9, 16, &c.); but an attentive reading of these acts shows that they apply only to "public officers" of the civil government of the Philippines and cannot have any application to the official misconduct of an officer of the U. S. Army.

An offense to be the subject of criminal procedure must be an act committed or omitted in violation of public law, either forbidding or commanding it.

4 Blackstone Comm., p. 4.
1 Wharton Crim. Law, sec. 1.
4 Stephen Comm., p. 89.

A public official of any government, who, having received public money, seeks to account for it by false, fictitious, or fraudulent vouchers, certainly violates some positive law and deserves condign punishment. But where an individual is employed to perform some service which involves the hand-

ling of public money, and the unexplained fact of certain vouchers produced by him, shown to be false and fictitious, is established, that does not expose him to prosecution and conviction on the charge of "corrupt abuse of office" or of official misconduct. If liable criminally, it is as an individual and not as an official person; but unless some positive law can be produced by which to "falsify a public or official document" is made a crime, he cannot be convicted of that offense in either character. Strictly, in order to conviction, the crime charged must be charged in absolute terms, positively and not in the alternative. One cannot be charged with attempting "to rob *or* to rape."

Second.

Major Carrington is shown by the record not to have received this fund as a "public officer of the civil government of the Philippines," but in his official character as a major of infantry of the United States Army. This is shown by Carrington's letter of October 8, 1903, addressed to Ferguson, Secretary of the insular government and signed by Carrington as "Major 1st infantry" (Rec., pp. 16, 17).

It is shown by the resolution of the Philippine Commission authorizing the "Disbursing officer of the Philippine Exposition Board" to transfer to the credit of "Major F. L. Carrington, 1st United States infantry," $3,000 in gold (Rec., p. 17); by the letter of Governor Taft, already referred to (Rec., p. 18); by the orders and drafts transferring the funds to his hands (Rec., p. 19).

It will be observed that while Governor Taft's order on the Treasurer is payable to "Major F. L. Carrington, disbursing officer, &c.," that Carrington does not take it in that character, but endorses the warrant of the governor simply "Major F. L. Carrington," and below is added, "official signature, F. de L. Carrington, Major, 1st Infantry." That is his official signature, in the employment and service to which

he has been designated. It is said in the opinion of the court (Record, p. 19) that each of the signatures was as follows: "F. de L. Carrington, Major 1st Infantry, D. O.," and that the letters "D. O." stand for "Disbursing Officer"; but certain it is that no such signature appears in this record, while we have in the record the certain fact that his official signature did not have those letters appended (Record, p. 19).

If the money was paid to him and received by him in his character as "Major 1st Infantry U. S. A.," it is in that character alone that he can be held responsible, and it is before those courts which alone are empowered to take cognizance of the official misconduct of officers of the Army that he can lawfully be brought to trial.

Major Carrington, being a citizen of the United States and having his legal domicile in the United States, and being in the Philippine Islands in the discharge of his duties as an officer of the United States Army, under the orders of his superior officers, cannot be lawfully deprived of his constitutional right to a trial by jury.

Section 1891, Revised Statutes, provides:

> "The Constitution and all the laws of the United States, which are not locally inapplicable, shall have the same force and effect within all the organized Territories, and in every Territory, hereafter organized, as elsewhere within the United States."

But we are admonished that by section 1, chapter 1369, 32 Statutes at Large, it being the act providing temporarily for the administration of the civil government of the Philippine Islands, it has been provided as follows, viz.:

> "The provisions of section 1891, Revised Statutes of 1878, *shall not apply to the Philippine Islands.*"

So far, then, as Congress can, it has withheld the Constitution and laws of the United States from that region, except as it has expressly admitted them. But is it a corollary from

that proposition, that civil and military and naval officers of the United States, when they go to the Philippines under orders from their government, are deprived of the protection of the Constitution and laws of the United States. The Secretary of War has recently made a visit to the Islands. Was he, while there, outside the Constitution of the United States? Was Lieutenant General Corbin, while he was commanding that department, actually standing outside the Constitution? Certain provisions of the Constitution and the laws are admitted. I do not find among these that particular statute which enacts the Articles of War. Are these articles in force in the Philippines? If so, how did they get there?

In a dissenting opinion in *Dorr v. United States, 195 U. S., 156,* Mr. Justice Harlan, in the spirit of prophecy which comes from long experience, said:

> "There are many thousands of American soldiers in the Philippines. Besides, they are there by command of the United States, to enforce its authority. They carry the flag of the United States and have not lost their American citizenship. Yet, if charged in the Philippines with having committed a crime against the United States, of which a civil tribunal may take cognizance, they cannot under the present decision claim of right a trial by jury. So that if an American soldier, in the discharge of his duty to his country, goes into what some call our "outlying dependencies," he is, it seems, outside the Constitution in respect of a right which this court has said was justly dear to the American people," &c.

The question suggested by this assignment of error involves no unseemly criticism of the judgment of this court in the Dorr case. That judgment must be accepted as the final declaration of the law as to the subject to which it was applied in that case. The question here is whether an officer of the United States Government, who is sent by his government to the Philippines on public business, does not carry with him, and retain while there, a personal right, of which

the law will not be construed to deprive him, to a trial by jury, on any charge made against him of malfeasance in the exercise of the duties of his office.

If the acts done by Major Carrington, which constitute the offense for which he was tried, and on which he was convicted by the territorial courts of the Philippines, were, as we have endeavored to show from this record, acts done by him in his capacity and in the discharge of duties assigned him as a major of infantry of the United States Army, was he subject at all to the jurisdiction of these courts.

In *Grafton v. United States, 206 U. S., 354,* this court said:

> "The same act may constitute two offenses, one against the United States, the other against a State. But these things cannot be predicated of the relations between the United States and the Philippines. The government of a State does not derive its powers from the United States, while the government of the Philippines owes its existence wholly to the United States, and its judicial tribunals exert all their powers by authority of the United States."

Third.

The punishment imposed upon the accused was "cruel and unusual," within the meaning and prohibition of Article VIII of United States Constitution.

The docket number of this case is No. 223. The record discloses one complaint, one trial, and one sentence. That is an imprisonment of fourteen years eight months and one day. But there are in the clerk's office of this court two or three other records, not yet printed, but abiding the result of this case, which records disclose that this plaintiff in error was tried and convicted and sentenced in these other cases for this same offense, distinguishable only in this, that in those cases other "public documents," being vouchers for the expenditure of this same money, were charged and shown, and in each of those cases a separate sentence was im-

posed, of imprisonment, and we are advised, but have not verified it, that the aggregate of these several sentences of imprisonment amount to forty years' imprisonment of this man for this offense.

Commenting upon this article of our Constitution, Mr. Justice Story said:

> "The provision would seem to be wholly unnecessary in a free government, since it is scarcely possible that any department of such a government should authorize or justify such atrocious conduct."
>
> Story on Constitution, sec. 1903.

But "insular possessions," with their grotesque train of startling anomalies, had not been reached in Judge Story's day. We had not then become a "world power." What is a cruel and unusual punishment to an American soldier, a graduate of West Point—to a man born and bred under humane and gentle associations—would not offend a Filipino as being at all in violation of humanity and decency. By what standards, then, are we to determine if or how far forty years' imprisonment of a man of forty is cr ' and unusual punishment? We may assume that the statute withholding the Constitution and laws of the United States from the Philippine Islands will not be construed to withhold them from an officer of the United States Army who is sent by his government to those Islands to perform military duty as such officer.

The punishment inflicted on this man by the sentence of the courts was cruel and unusual, within the meaning of the Article VIII, United States Constitution and within the express terms of chapter 1369, 32 Statutes at Large, page 693, which provides that "cruel and unusual punishment shall not be inflicted" in the Philippines.

What is *cruel* punishment? That which is abhorent to the enlightened moral sense of civilized man. Torture, by gradual mutilation, as practiced by our Indians, on their

prisoners. *Peine forte et dure,* to make a man plead or answer. What may be "cruel" in one age or among one people may not be so in another age or among other people. A punishment may, perhaps, be deemed cruel and unusual if from its nature it would be intolerable to one class of people, but comparatively indifferent to others; for example, the punishment of cutting off the hair of a Chinaman.

Wharton, Criminal Pleading and Practice, sec. 920.

Confinement in the penitentiary for fourteen years, as in this one case, or for forty years, as in the three cases now in this court, in which the aggregate punishment in all the cases amounts to that period of a man whose official career during a service of thirty years in the United States Army is such as Major Carrington's is shown to be by the official record appended to this brief, for the offense—not of treason, or murder, or embezzlement, or stealing—but of "falsifying a public or official document." He is shown to be of about fifty years of age. Forty years' imprisonment would be, as to him, an imprisonment for life—a punishment imposed only for crimes of atrocity and heinous guilt.

The punishment is *unusual.* Such a punishment, for such an offense, is not to be found in the code of criminal laws of any civilized people. Under the present laws of the United States, it is a punishment imposed for the crime of murder in the first degree. It appears to be unusual even in the Philippines. In *Kepner v. United States, 195 U. S., 110,* a practicing lawyer in Manila was tried and convicted of embezzling the funds of his client, and sentenced by the same court whose judgment is here complained of, to a term of imprisonment of one year eight months and twenty-one days. His offense involved not merely stealing, but also breach of trust, violation of official obligation, and abuse of the most sacred and confidential relations that can be formed between men in their business life.

On the whole case as presented in this record, we ask for

the reversal of the judgment complained of on the following grounds:

1. The accused was never *appointed* to the office which he is charged with having abused and the obligations of which he is charged with violating.

2. He never *qualified* as such official by taking an oath of office, or giving a bond, or in any other way.

3. He never *held* such office, but was made ineligible to it by act of Congress.

4. There is not shown by this record to have been any such office as the one which he is charged with having held.

5. There is no such offense known to the common law, the statute law of the United States, or the law of the Philippine Islands as that of "falsifying public or official documents."

6. He was not amenable to the civil courts of the Philippine Islands for the alleged offense with which he was charged, because, if committed by him at all, it was committed while in the exercise of his office as major of first infantry, U. S. Army, it appearing that in that character and capacity, and in that alone, was the money paid to him and received by him, and for any malfeasance in that office he was triable only before a court-martial.

7. As an officer of the United States Army, on duty as such in the Philippines, under the orders of the Government of the United States, he had not forfeited or been deprived of his right to a trial by jury.

8. The punishment imposed upon him was *cruel* and *unusual*, and thus in violation of the Constitution of the United States and of the acts of Congress governing the Philippine Islands.

HOLMES CONRAD,
For Plaintiff in Error.

APPENDIX.

WAR DEPARTMENT,

THE ADJUTANT GENERAL'S OFFICE.

Statement of the Military Service of Frank de L. Carrington, Late Major, 1st United States Infantry.

He entered the United States Military Academy as cadet September 1, 1874; was graduated and appointed second lieutenant of infantry June 14, 1878; was promoted to be first lieutenant, 1st infantry, March 7, 1883; captain, same regiment, August 30, 1893, and major February 2, 1901. He served in the volunteers as lieutenant colonel, 8th California infantry, from July 8, 1898, until honorably mustered out of the volunteer service, February 6, 1899.

The following is a summary of his military record:

After his graduation and appointment as second lieutenant he served with his regiment in Dakota from September, 1874, to June, 1880; at stations in Texas to May, 1882, and in Arizona to September, 1885. During his service in Arizona he participated in expeditions in the field against hostile Indians July to September, 1882, and March to June, 1883. He served as inspector of rifle practice, Department of Arizona, from September, 1885, to July, 1886, and subsequently with his regiment at various stations in California to June, 1895. In the meantime he took part with his regiment in the campaign against Sioux Indians in South Dakota, December, 1890–January, 1891. He was on duty with the National Guard of California from June, 1895, to April, 1898, when assigned to duty as United States mustering officer at San Francisco. He continued on this duty until July, 1898, when appointed lieutenant colonel, 8th California volunteer infantry. He served with that regiment in California until September, 1898, and was subsequently on duty as chief mustering officer for the States of Oregon and Washington until January, 1899. He was on duty at Van-

couver barracks, Washington, to June, 1899, when he proceeded to join his regiment—the 1st infantry—in Cuba. He returned from Cuba with his regiment in September, 1900. He was on leave of absence from June to September, 1901, when he proceeded to join his regiment in the Philippine Islands. In April, 1903, he was detached to command a battalion of Philippine scouts and brought his battalion to the Louisiana Purchase Exposition at St. Louis, Missouri, in March, 1904. He was relieved from this command in April, 1904, and returned to the Philippine Islands in June, same year, and was subsequently in the hands of the civil authorities at Manila up to the date of his dismissal from the Army, July 15, 1905, pursuant to sentence of court-martial published in War Department General Orders No. 121, July 26, 1905, copy herewith.

HENRY P. MCLAIN,
Adjutant General.

NOVEMBER 2, 1907.

In the Supreme Court of the United States

OCTOBER TERM, 1906

FRANK DE L. CARRINGTON, PLAINTIFF IN ERROR,

v.

THE UNITED STATES.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS

Brief of Plaintiff in Error

R. A. BALLINGER,
Counsel for Plaintiff in Error.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1906

FRANK DE L. CARRINGTON, PLAINTIFF IN ERROR,

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THE UNITED STATES.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS

Brief of Plaintiff in Error

STATEMENT OF FACT.

On the 14th day of October, 1904, an information was filed in the Clerk's Office of the Court of First Instance of the City of Manila, charging the plaintiff in error as a public official of the United States Civil Government of the Philippine Islands with the crime of falsification of a public document by a public official. The case, after various preliminary motions had been disposed of, came regularly on for trial, and the evidence introduced showed the following facts, which are not in question at the present stage of the proceedings. (Pages 4 to 11 and 11 to 21 of the Record.)

On the 3rd day of November, 1903, pursuant to suggestions contained in a communication from the plaintiff

in error, the Philippine Commission passed the following resolution:

"On motion, Resolved, That the disbursing officer of the Philippine Exposition Board be and he is hereby authorized and directed to transfer to the credit of Major F. L. Carrington, 1st United States Infantry, commanding the Provisional Battalion of Philippine Scouts to be transported to St. Louis in 1904 in connection with the Philippine Exhibit at the Louisiana Purchase Exposition, the sum of $3000.00, United States currency out of the general fund appropriated for the Philippine Exhibit, to be used and accounted for by Major Carrington in the construction by the members of the battalion in the Philippine section of the Louisiana Purchase Exposition grounds of a model administrative building of native materials in which to conduct the business of the battalion, exhibit weapons, arms, wares, etc., and to contain a reception room for Army, Navy and Philippine Civil Officials; and

"Be It Further Resolved, That the disbursing officer of the Philippine Exposition Board be and he is hereby authorized and directed to deposit to the credit of Major Carrington the further sum of $500.00, United States currency, with which to defray in part the expenses of transportation and maintenance of such families of scouts as may be given permission to accompany the battalion to St. Louis: Provided, however, That the foregoing resolutions, together with the correspondence, be forwarded to Don Pedro A. Paterno, member of the Exposition Board, and Senor Leon Guerero, Secretary of the Board, for their approval and concurrence in these resolutions, or disapproval of the same and the return of all papers to Civil Governor, who may then, if the resolutions be approved, designate Major Carrington as disbursing officer to receive the funds mentioned in these resolutions."

This resolution was duly transmitted to said Messrs. Paterno and Guerero, and in conformity with their ap-

proval the Honorable William H. Taft, then Civil Governor, addressed the following communication to the plaintiff in error:

"Sir: You are hereby designated to withdraw, receive, expend and account for the funds authorized by resolution of the Commission adopted November 3, 1903, to be expended in the preparation and display of a Scout Exhibit at the Louisiana Purchase Exposition, as set forth in said resolution."

Pursuant to the foregoing, there was placed to the credit of the plaintiff in error by the Disbursing Officer of the Exposition Board the sum of $3500.00, which said sum, as claimed by him, was disbursed by plaintiff in error and account rendered to the Auditor of the Philippine Islands. Among other vouchers the following appeared in his returns:

"Auditor 125.
General Expense Voucher.
Philippine Currency.
(Mexican or United States.)

Appropriation for Exposition Purposes, Act 824 F. Y., 1904.

The Government of the Philippine Archipelago to Charles A. Jollie,

Dr.

17

DATE	ARTICLE OF SERVICE	AMOUNT	REMARKS
1904			
Jan. 10	2750 ft. Hardwood Lumber @ $280 per M	770.00	

Authority filed with voucher 1. Abt. Dis. Dec. 1903. (See Note D.)

I certify that the above account is correct and just. The services were rendered as stated and were necessary for the public service. Articles purchased have been taken up in property book of this office and will be accounted for to the Auditor on my return for the period ending March 31, 1904.

(Signed) F. DE L. CARRINGTON,
Maj. 1st Infantry D. O.

Approved:

(Signed) F. DE L. CARRINGTON,
Maj. 1st Inf. Com'd'g Prov Batt., N. S.

Received of Maj. F. de L. Carrington, 1st Inf., this 10th day of January, 1904, the sum of seven hundred seventy (770) /100 Dollars, in full payment of above, which I hereby certify to be correct.

Paid by Check No. ____

Date ----------, 190____

In favor of ----------

(Signed) CHARLES A. JOLLIE.
(Signature of Creditor.)"

The foregoing voucher was signed by Charles A. Jollie as a receipt to the plaintiff in error for money disbursed by him for the purpose mentioned in the said voucher. The evidence, according to the Findings of Fact by the Court, showed that no such transaction had ever been made, and the complaint alleged that the certification by the plaintiff in error that the account referred to in the voucher was true and correct constituted the crime of

falsification of a public document by a public official. The accused was convicted by the trial Court in the Court of First Instance of Manila and sentenced to imprisonment in Bilibid Prison for the term of twelve years and one day and to pay the costs of the case. This judgment was, on appeal to the Supreme Court of the Philippine Islands, by decision rendered on March 25, 1906, modified, and the plaintiff in error, as defendant, was sentenced to 14 years 8 months and 1 day of *cadena temporal* and to a fine of 1250 pesetas, together with the costs of the case.

The plaintiff in error, on March 26, 1906, presented his petition for a writ of error and filed therewith an assignment of errors, and which said petition was duly allowed.

SPECIFICATION.

The errors assigned give rise to the following questions:

1. Was the defendant, now plaintiff in error, in view of the fact that he was at the time of the commission of the falsification an officer of the Army of the United States, also an official of the Civil Government of the Philippine Islands, or did his vocation render it impossible for him to have been such an official?

2. Considering that the fact of his having been an officer of the Army of the United States did not render it

impossible for him to have been such civil official, did such an office as the one alleged in the complaint really exist, and was the defendant, now plaintiff in error, ever appointed to it?

3. Was the plaintiff in error, an officer in the Army of the United States, and being in the Islands by virtue of the orders of his superior and not from his own volition, entitled to a trial by jury in a civil court in the Philippine Islands, territory of the United States, where all criminal prosecutions are conducted in the name of the United States?

4. Considering questions one and two answered in the affirmative, was the voucher containing the false certificate, or the untrue certificate itself, such a public document as was intended by the legislative authority in enacting section 300 of the Penal Code?

5. Was the sentence of 14 years 8 months and 1 day a cruel and unusual punishment for the crime charged, in such manner as to infringe Article VIII. of the Amendments to the Constitution of the United States?

6. In view of the failure of the law in force in the Philippine Islands to provide for a change of venue in case of prejudice or impartiality of the trial judge and its failure further to provide for a trial by jury, was the defendant guaranteed and given a public and speedy impartial trial as guaranteed by Section 1 of the Philippines

Bill and Article VI. of the Constitution of the United States? Was it due process of law?

ARGUMENT.

I.

The defendant, an officer in the Army of the United States, could not have held the alleged civil office and could not have been the officer he was alleged to be in the complaint.

Section 1222 of the Revised Statutes of the United States provides:

> "No officer of the Army on the active list shall hold any civil office, whether by election or appointment, and every such officer who accepts and exercises the functions of a civil office shall thereby cease to be an officer of the army and his commission shall be thereby vacated."

Paragraph 4 of Section 1860 of the Revised Statutes is as follows:

> "No person belonging to the Army or Navy shall be eligible to hold any civil office or appointment in any territory."

An army officer may be appointed or detailed to perform the duties that pertain to a civil office, but the mere fact that he is so detailed does not make him a civil officer. On the contrary, he cannot be such, and all the time he may be performing the duties that may pertain to some civil office or employment he continues to be an army officer and

is responsible for his official acts only as an army officer. The charge in this case is that the defendant was a civil official of the Government of the Philippine Islands and he was convicted as such official. On the other hand, if it is contended that the document in question is official, for the reason that it was signed by or issued by an army officer, then the Court of First Instance could not try him as such an official, but it would be necessary that he be punished by court martial or under some federal law, before a federal court.

II.

Even though the fact of the plaintiff in error being an officer of the Army of the United States did not render it impossible for him to hold the alleged civil office, there was no such office, and if such existed, the defendant was never appointed to it and never qualified as a civil official of any kind.

For an office to exist there must be some law creating it and upon which its existence depends. That there was no law creating the alleged civil office that the plaintiff in error is supposed to have occupied at the time of the commission of the alleged crime, appears from the facts of the case. Certain funds had been by law appropriated for expenditure by the Philippine Exposition Board for certain purposes and a disbursing officer had been provided by that law through whom the fund was to have been dis-

bursed. It could not have been legally disbursed in any other manner. The Philippine Commission, by a resolution set forth in full in the foregoing statement of fact, attempted to transfer to the plaintiff in error a part of the fund provided by law to have been disbursed by the Exposition Board. This resolution was not law and could not have had the effect of repealing any other provision of law, for it did not conform to Act 6 of the Philippine Commission, providing for the manner of procedure by the commission in the enactment of laws. Nor did it conform to Section 1 of the Philippines Bill. Act No. 6 provides:

"In the making of rules and orders having the force of laws as provided in the instruction to the Commission, the following procedure shall be adopted, viz:

"(a) All such rules and orders as are of distinctly legislative character shall be termed 'Acts.'

"(b) All Acts shall, before the enacting clause, be prefaced by a title stating the purpose and scope of the Act;

"(c) The enacting clause shall be in the following form, viz:

'"By authority of the President of the United States, be it enacted by the Philippine Commission that:'"

In Section 1 of the Act of Congress of July 1, 1902, it is stated:

"All laws passed hereafter by the Philippine Commission shall have an enacting clause as follows: 'By authority of the United States be it enacted by the Philippine Commission,"

It is true that the funds were transferred to the plaintiff in error and he was responsible for them, as any other individual would have been to the Civil Government of the Philippine Islands, but only as an individual. If he violated his oath as an army officer he should have been punished as such, or he should have been punished by a civil court as an individual, for it is clear that no such office as the one alleged in the complaint ever existed, and even though it did, the plaintiff in error never occupied it.

U. S. v. Hartwell, 6 Wall. 385.

U. S. v. Morris, 2 Brock 96.

Hall v. Wisconsin, 103 U. S., 13 Otto 511.

III.

The plaintiff in error was an officer in the Army of the United States, and, being in the Islands not from his own volition but by reason of the orders of his superior, he was entitled to a trial by jury as guaranteed by Section 2 of Article III. of the Constitution of the United States and by Article VI. of the Amendments thereto.

So far as concerns the people of territory ceded to the United States, Congress may provide modes of trial without the guarantees contained in the Constitution of the United States.

Dorr v. U. S., 195 U. S. 138.

In the case above mentioned the Supreme Court announces the following question:

"For this case the particular question is, must Congress, in establishing a system of trial of crime and offenses committed in the Philippine Islands, carry to their people by proper affirmative legislation a system of trial by jury?"

This question the Court has decided in the negative. But it is contended that the plaintiff in error is in a different position than the citizens of those islands, or from that of civilian Americans who voluntarily place themselves under the jurisdiction of the laws of the place, by reason of his vocation as an Army Officer. He is not in this instance prosecuted by any distinct government of a State or of an organized Territory of the United States, but is prosecuted by a Court organized pursuant to a law of Congress and prosecuted in the name of the United States. It is by virtue of the Constitution of the United States that his superiors command him, and yet we find him prosecuted by that same government of the United States, and under that same Constitution, and yet deprived of the safeguards which that Constitution provides. From the question propounded in the Dorr case and the one decided, it was evident that the Court intended to distinguish between that case and the one now before us.

IV.

Considering that such an office as the one alleged in the complaint actually existed and that the plaintiff in error occupied it, the voucher set forth in the complaint

is not such a document as was intended by the legislative authority in the enactment of Article 300 of the Penal Code.

Article 300 of the Penal Code, under which the plaintiff in error was prosecuted, provides as follows:

"Art. 300. The penalties of *cadena temporal* and a fine of from 1,250 to 12,500 pesetas shall be imposed on a public official who, taking advantage of his authority, shall commit a falsification—

1. ------
2. ------
3. ------
4. By perverting the truth in the narration of facts."

It will be noted from the foregoing that the Spanish law imposes severe penalties for the crime of falsification of a public document by a public official; and this is for the reason that the public must rely upon the acts of its officials in their dealings with the public as being correct, and great prejudice must result from the issuance to the public, or for their use, of unreliable instruments. In the present case the voucher referred to was not issued to the public nor for any public use. It merely referred to the account existing between the plaintiff in error and the Philippine Government. The only harm that could have resulted from the false certificate was the loss of $385 to the Philippine Government, and the certificate was made for the sole purpose of covering up an embezzlement of that sum, and was but incidental in the defalcation. The

real crime was the defalcation. It is respectfully submitted that such an act was not intended by the legislative power to constitute the grave crime of falsification of a public document by a public official.

V.

The punishment inflicted upon the defendant is a cruel and unusual one, contrary to the provisions of Article VIII. of the Amendment to the Constitution of the United States.

We find that in the present case, as before stated, that the only resulting injury from the falsification of the certificate referred to was the loss by the Philippine Government of the sum of $385, and in this and the cases analagous, in which the decision in this is to govern, being Nos. 597, 598 and 599, the only injury resulting was the loss in all by the Government of the Philippine Islands of the sum of $1,500 United States currency, and in each of these three cases he was sentenced to a term of imprisonment of 14 years 8 months and 1 day, or a total of 44 years and 3 days' imprisonment, this being reduced to 40 years by virtue of Article 88 of the Penal Code. A life sentence under the laws in force in the Philippines is but 30 years! But the plaintiff in error has been sentenced, and, unless the sentence be set aside or executive clemency be extended, he must serve the term of 40 years at hard labor for the embezzlement of $1,500!

In *Pervear v. Commonwealth,* 5 Wall 475, and in *Oneill v. Vermont,* 144 U. S. 323, it is intimated by the Court that a punishment could be so excessive as to be cruel and unusual within the meaning of Article VIII. of the Amendment to the Constitution of the United States. The question, however, was not definitely decided for the reason that the Court did not consider the matter as properly raised as a Federal question, and that the prohibition mentioned in the article did not apply to the States. In the present case, however, we find the defendant prosecuted before a court organized pursuant to a law of Congress and prosecuted in the name of the United States. The Supreme Court of the Philippine Islands has power to diminish or reduce a sentence, and this question is therefore properly raised in the assignments of error.

VI.

Under the laws in force in the Philippine Islands under which this defendant was tried, he is not guaranteed a speedy and public impartial trial, as provided in Article VI. of the Constitution of the United States and Section 5 of the Act of Congress of July 1, 1902, 32 Stat. at L. 691.

It has been decided by this Court that under certain circumstances Congress may provide for a system of procedure which dispenses with the trial by jury in territory belonging to the United States so long as a fair and impartial trial is guaranteed. The laws of the Philippine

Islands make no provisions for a change of venue, and there is no means whereby a defendant can avoid being tried by his mortal enemy, if the trial judge should happen to be such. If he gets a fair and impartial trial, it merely happens in the course of events. It would seem that a right to a change of venue would be necessary under a system which provides no jury trial and where a single judge is the sole arbiter of both the law and the facts. Such a provision is considered a proper safeguard under the laws of at least most of the States of the United States where the trial Court has no further functions than to preside at the trial and decide questions of law that arise. Certainly the right to a fair and impartial trial is too fundamental to be dispensed with by a law of Congress.

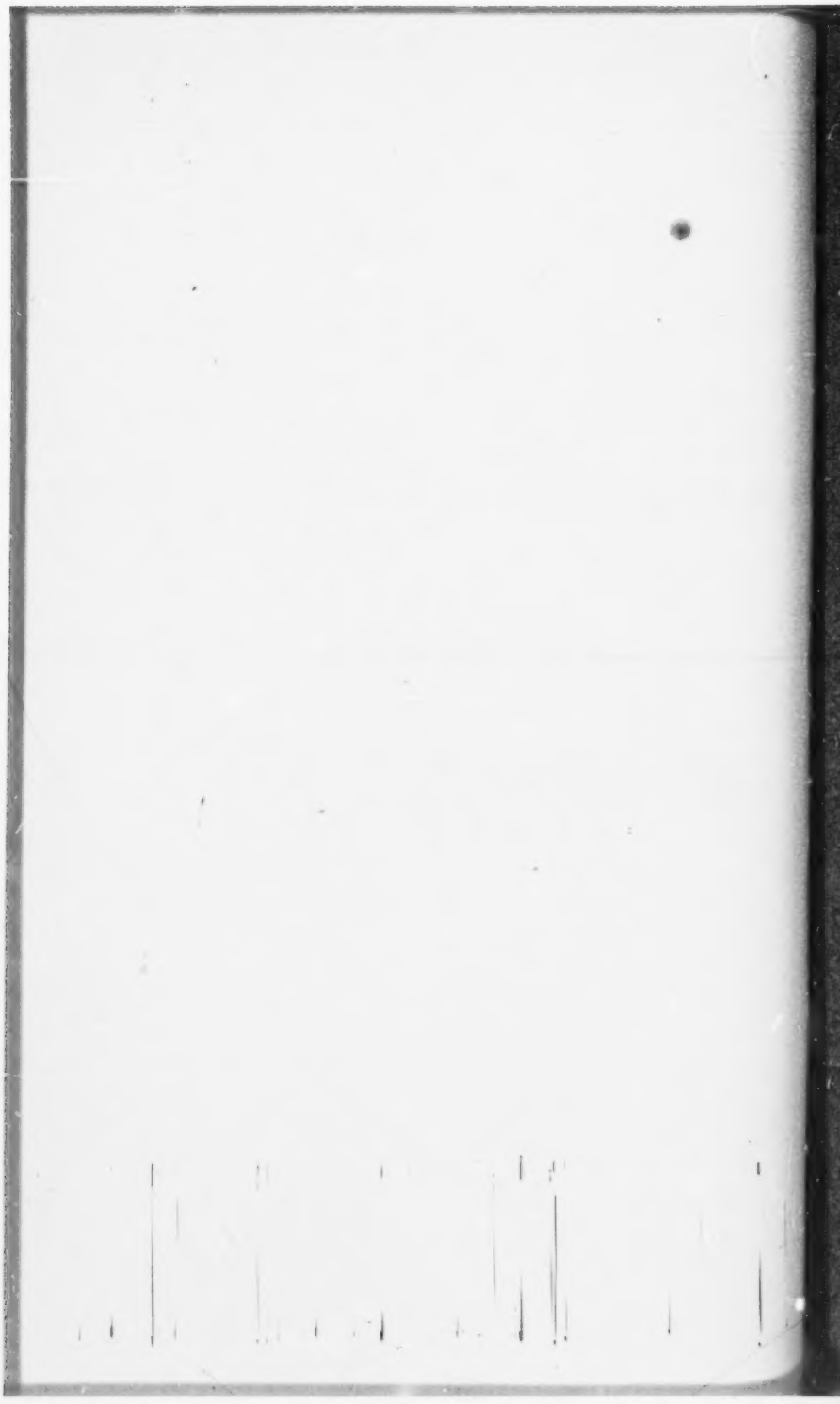
It is submitted that a system of procedure which fails to provide either a jury trial or a change of venue to insure a just and impartial trial is too far removed from the principles of American jurisprudence to be valid or to be considered as due process of law.

For the foregoing reasons the plaintiff in error asks that the sentence of the Supreme Court of the Philippine Islands be reversed and set aside.

Respectfully submitted,

R. A. BALLINGER,

Counsel for Plaintiff in Error.



OFFICE SUPREME COURT, U. S.
FILED
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JAMES H. MCKENNEY
CLERK

Nos. 223, 224, 225.

In the Supreme Court of the United States.

OCTOBER TERM, 1907.

FRANK DE L. CARRINGTON, PLAINTIFF IN ERROR,

v.

THE UNITED STATES.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR THE UNITED STATES.

18521—07

In the Supreme Court of the United States.

OCTOBER TERM, 1907.

FRANK DE L. CARRINGTON, plaintiff in error, *v.* THE UNITED STATES. } Nos. 223, 224, 225.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR THE UNITED STATES.

Plaintiff in error was accused of the crime of falsification of a public document by a public official under article 300 of the Penal Code of the Philippines, in that he, being a disbursing officer of the Philippine government, made a false expense voucher purporting to represent certain expenditures from an appropriation in his charge made for the purposes of the Louisiana Purchase Exposition. (Rec., pp. 1–3.) The Court of First Instance found him guilty as charged in the complaint, and sentenced him to imprisonment for twelve years and one day, with payment of costs (pp. 10–11). On appeal to the Supreme Court of the Philippines the judgment of the lower court was affirmed, and the sentence increased to imprisonment for 14 years 8 months and 1 day and a fine

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of 1,250 pesetas, with costs (p. 20). A petition for rehearing was denied (p. 22), and an application was then made to this court for a writ of error, which was allowed.

Plaintiff was indicted in five cases in all. (Rec., p. 9, V.) Three of these cases went to the Supreme Court of the Philippine Islands, being consolidated for trial, and are now here, the decision in this particular case, No. 597, to be decisive of all (stipulation of counsel, p. 29).

Assignment of Errors.

These allege that there was no disbursing office for public funds of the Philippine government appropriated on account of the St. Louis Exposition; that plaintiff was not a duly appointed, qualified, and acting disbursing officer of the Philippine government; that, being an officer of the United States Army, he could not hold civil office in view of the provisions of sections 1222 and 1860, Revised Statutes; that he was entitled to a trial by jury; that the punishment inflicted upon him was cruel and unusual; that he was not allowed a fair and impartial trial.

ARGUMENT.

I.

It is contended that there was no office in existence to which Carrington could be appointed, because a civil office must be created by law, and there was no law in this instance creating the office in question.

To support this contention counsel (brief on motions to dismiss, etc., p. 11) cites act No. 6 of the Philippine Commission (September 26, 1900, 1 Pub. Laws, 8), which provides certain rules that shall govern the Commission in the enactment of laws.

The office held by plaintiff was not, it is true, created by an act of the Commission, but by a resolution of that body passed November 3, 1903. (Rec., pp. 6–7, 17–18.) The act cited has not the force of a constitution or organic law, and can not preclude the same body which passed it from legislating in a manner not prescribed by its terms—that is, passing resolutions. Such resolutions have the force of law. A joint resolution is defined to be "a form of legislation which is in frequent use in this country, chiefly for administrative purposes of a local or temporary character." (Cush. Law & Prac. Leg. Assem., sec. 2403.) In Congress joint resolutions are regarded as bills and have the effect of laws. The independence of Cuba was recognized by a joint resolution, which authorized the President to use the land and naval forces of the United States to carry its provisions into effect; and it was by joint resolution that the Hawaiian Islands were annexed to the United States. A resolution is also recognized as a form of legislation in some of the States (*Olds* v. *State Land Office*, 86 N. W., 956; *St. Paul, &c., Ry. Co.* v. *Brown*, 24 Minn., 517; *State* v. *Dahl*, 6 N. D., 81; *Rice* v. *State*, 95 Ind., 33; *McPherson* v. *Leonard*, 29 Md., 377); and where it has been held not to have the effect of law, it was because of a constitutional pro-

vision forbidding the passing of laws except by bill, or because the resolution was not passed with the formalities required by the constitution. (See *Burritt* v. *Commissioners*, 120 Ill., 322; *Mullan* v. *State*, 114 Cal., 578; *Collier, etc., Litho. Co.* v. *Henderson*, 18 Colo., 259.)

I submit that in the present case the resolution of the Philippine Commission authorizing the appointment of the plaintiff as disbursing officer had the same force and effect as a law passed by the Commission, which complied with all the formalities required by act No. 6, and that if the resolution is in conflict with that act the latter is in so far repealed.

Carrington was a public official, however, quite independent of the fact whether an office did or did not exist. The offense with which he was charged is thus defined and punished in the Penal Code:

> SECTION I. Falsification of official and commercial documents * * *
>
> ART. 300. The penalties of *cadena temporal* and a fine of from 1,250 to 12,500 pesetas shall be imposed on a public official who, taking advantage of his authority, shall commit a falsification.
>
> * * * * *
>
> 4. By perverting the truth in the narration of facts.

Article 401 of the Code provides:

> For the purposes of this and of the preceding titles of this book, every person shall be

> considered a public official who, by the immediate provisions of law or by popular election or appointment by competent authority, takes part in the exercise of public functions.

Viada comments on this section of the Code as follows:

> Upon trying to define the term *public functionary*, it must be remembered that the law does not say "he is a public functionary," but that "he shall be considered a public functionary," a form which seems to be rather conventional and factitious and of greater latitude and extension than that ordinarily employed in giving definitions. A public functionary is a person who takes part in the exercise of public functions of more or less importance, of large or small scale, or by the immediate provisions of law or by popular election or appointment by competent authority. Within this definition, so general and clear, are comprehended from the ministers of the Crown down to the lowest "alguacil" of a municipal court or of the most insignificant "ayuntamiento" (city hall). * * * (2 Viada, 695.)

When all the circumstances connected with plaintiff's appointment and his subsequent acts thereunder are considered, it is manifest that he is within the definition of public official given in article 401. The record shows the facts to be as follows: Major Carrington addressed a letter to the executive secretary of the Philippine government, suggesting the construction at the Louisiana Purchase Exposition

of a building in which to conduct the business of the Scout Battalion, to be part of the Philippine exhibit at the exposition, and also suggesting that the necessary funds, estimated at $3,000, be transferred to him from those already appropriated for the Philippine exhibit. This letter was referred to the exposition board by the civil governor, who recommended that the request be granted. The proposition was accepted by the board, and the Commission passed the resolution of November 3, 1903, authorizing the transfer of the funds to Major Carrington, and his appointment by the governor as disbursing officer, to receive said funds. In conformity with this resolution, plaintiff was duly appointed by the governor, the funds were transferred to his credit as "Disbursing Officer, Exposition Funds," and he proceeded to disburse the same. The expense vouchers, checks, and accounts presented in evidence at the trial were all signed as follows: "F. de L. Carrington, Major 1st Infantry, D. O." The letters "D. O." signified "Disbursing Officer," a customary way of indicating the official character of such officers (rec., pp. 2, 12, 19).

It thus clearly appears that Carrington, being designated by the civil governor, upon the resolution of the Philippine Commission, was appointed by competent authority, that he discharged the duties thereby imposed upon him, and that he evidently looked upon himself and held himself out to be a public official, and acted as such, in committing the acts charged against him under article 300 of the Penal Code.

But even if not an officer *de jure*, he was at least an officer *de facto*. Mr. Justice Swayne in *Hussey* v. *Smith*, 99 U. S., 20, said:

> An officer *de facto* is not a mere usurper, nor yet within the sanction of law, but one who, *colore officii*, claims and assumes to exercise official authority, is reputed to have it, and the community acquiesces accordingly. (Citing *Willcox* v. *Smith*, 5 Wend., 231; *Gilliam* v. *Reddick*, 4 Ired., 368; *Brown* v. *Lunt*, 37 Me., 423.)

A *de facto* officer is liable to punishment for misconduct in office just as much as an officer *de jure*, and he can not escape liability by denying title. "It is the general rule, upon grounds of plain justice and public policy, that a *de facto* officer is forever estopped in civil or criminal actions from denying that he holds the office and from escaping any of the responsibilities which attach to his incumbency." (*Buck* v. *City of Eureka*, 109 Cal., 504, 512.) In *Allen* v. *McNiel*, 1 Mills (S. C.), it is said: "When a person is sued for any act done by him in an official capacity, it does not lie in his mouth to say he is not the person he has held himself out to the world to be." It is unnecessary to multiply authorities for this elementary proposition, but the following may be cited as a few of the principal cases:

Diggs v. *State*, 49 Ala., 311.
People v. *Church*, 1 How. Pr., N. S., 366.
State v. *Long*, 76 N. C., 254.
Pentecost v. *State*, 107 Ala., 81.
State v. *Stone*, 40 Iowa, 547.
Wendell v. *Fleming*, 8 Gray, 613.
State v. *Bates*, 36 Vt., 387.

There is no merit in the contention that this voucher was not a public document. The test is not, as counsel seems to think (brief on motions to dismiss, etc., p. 14), whether a document is issued *to the public* or for some use affecting the public. No such limited meaning can be inferred from the law itself. As a matter of fact the words "public document" do not appear in article 300 of the Penal Code. The chapter containing that provision is entitled simply "Falsification of Documents," the subheading being "Falsification of Official and Commercial Documents and Telegraphic Despatches."

Article 579 of the Spanish Code of Civil Procedure defines the term *public document* as follows:

> The following are solemn public documents:
>
> * * * * *
>
> 3. Documents issued by public officers in reference to the performance of any of their duties when authority therefore is vested upon them.

The voucher was issued by Carrington in his capacity as disbursing officer in conformity with the provisions of section 20 of the Civil Code of the Philippines (act No. 90, 1 Pub. Laws, 160, 164), which is as follows:

> Accounts of disbursements shall be rendered monthly and transmitted to the auditor within ten days after the expiration of the month to which they pertain by the officers and agents authorized to make disbursements, in which such officers or agents shall charge themselves with all moneys advanced to them,

> respectively, by the treasurer, and take credit for the disbursements made by them, supported by proper vouchers. An abstract of the disbursements, accompanied by the vouchers therefor, consecutively numbered, shall be transmitted with each account.

It is difficult to see how it can be claimed that the voucher in question, issued by plaintiff in reference to the performance of his duties as disbursing officer, and included in his monthly account to the auditor, as required by the section just quoted, is other than an official or public document, falling within article 300 of the Penal Code.

II.

The prohibitions of section 1222, and paragraph 4 of section 1860, Revised Statutes, as amended by the act of March 3, 1883 (22 Stat., 567), do not apply to this case. Section 1860 forms part of a title containing "Provisions common to all the Territories;" the section itself refers specifically to organized Territories and can not be regarded as applying to the territorial possessions of the United States. It may be remarked here that the act of 1883 just cited is not a substitute for section 1222, R. S., as stated by counsel for plaintiff in error (brief on the merits, p. 4), but simply amends section 1860 by excepting retired army officers from its prohibition.

The civil offices which sections 1222 and 1860 prohibit army officers from holding are those which are incompatible with their military character and office.

In the circumstances shown there is nothing in Carrington's performance of the duties of his civil office which was at all incompatible with his military character and office. Since the time when the Philippines were first occupied by the United States a great part of the civil administration has necessarily been carried on through military agents. During the period of military occupation many civil offices were held by officers of the Army acting under appointment of the commanding general of the occupying forces, and this state of affairs of necessity exists more or less up to the present time. In enacting "Provisions common to all the Territories" Congress was, of course, aware that the government of territory acquired as the result of conquest would have to be carried on in such a manner until the status of the territory and its inhabitants had been determined by Congress; and if Congress had intended to make this prohibition operative as to such territory it would have used language which clearly indicated that purpose. None, however, is to be found in the statutes which can possibly be regarded as applying to territory of the United States as distinguished from the organized Territories which were in existence when these statutes became law. Quite the contrary appears from reading the remaining provisions of the chapter containing section 1860. Those relate to the appointment and duties of various executive, legislative, and judicial officers, to elections, census, the right to send Delegates to Congress, etc. It follows that if section 1860 applies to the Philippines, then each of

those other sections composing the chapter in question must be equally applicable, which would be a wholly untenable proposition.

None of these laws, in fact, is in force in the Islands. The Philippine government act of July 1, 1902 (32 Stat., 691, 692), provides that section 1891 of the Revised Statutes shall *not* apply to the Philippine Islands. That is the section extending the Constitution and laws of the United States, not locally inapplicable, to the organized Territories. The provisions under consideration, therefore, not having been expressly extended by Congress to the Philippines, must be considered as having been withheld therefrom.

III.

That defendant was not entitled to a trial by jury is conclusively determined by the case of *Dorr* v. *United States*, 195 U. S., 138. There the court said (p. 149):

> We conclude that the power to govern territory, implied in the right to acquire it, and given to Congress in the Constitution in Article IV, section 3, to whatever other limitations it may be subject, the extent of which must be decided as questions arise, does not require that body to enact for ceded territory not made a part of the United States by Congressional action, a system of laws which shall include the right of trial by jury, and that the Constitution does not, without legislation and of its own force, carry such right to territory so situated.

It is contended, however, that because plaintiff, as an officer in the Army of the United States, was in the Philippines not of his own volition but in pursuance of his military duty by reason of the orders of his superior, the decision in the *Dorr* case is not applicable to him. There is no intimation in the language of the court in that case which would give support to the theory that a soldier in the Philippines stands on a different footing from anyone else in those islands with respect to the matter of jury trial. Those who violate law are to be tried by the law of the place, which is *a fortiori* when an officer and citizen of the United States violates a law of one of the possessions of the United States.

Upon this point the Supreme Court of the Philippines in the present case aptly said (rec. p. 15):

> Let us suppose, therefore, that the accused was sent by order of the President of the United States to a certain State in which there was no provision as to trial by jury, and that while there he broke the laws of that State: Could he insist in the courts of that State, where there was no provision made for jury trials, that he be tried by jury according to the Constitution of the United States, which does not rule nor has any application in said State? In our opinion when a citizen, whether a member of the United States Army or no, goes to a certain State or Territory of the Union and breaks the laws thereof, he is subject to be judged in accordance with the rules established in said State or Territory, so long as the system of procedure in force in said Territory or State be of a just and impartial character.

It was held in *In re Ross*, 140 U. S., 453, that an American seaman could be punished for murder by the consular court in Japan without a jury trial. The seaman there was an alien, but having enlisted on an American merchant vessel, he was clothed *pro hac vice* with all the qualities of a citizen under the law, and as such entitled to the protection and benefits of all the laws passed by Congress on behalf of American seamen and subject to all their obligations and liabilities. The case of a seaman in the mercantile service is thus analogous to that of a soldier during his enlistment. Each can enlist or not as he chooses, but having enlisted, one as much as the other is bound to go where the orders of his superiors send him under his contract and the law. Both are subject to the law of the place as provided or approved by the national authority.

The proper conclusion to be drawn from the *Ross* case is that the guaranty afforded by the Constitution of a trial by jury applies only to citizens and others within the United States, and that neither citizens nor others, whether in the military service or not, are so entitled before a tribunal created by law under the authority of the United States, either in a foreign country or in a territorial possession of the United States.

It is to be observed upon this point that clause 1 of section 5 of the Philippine government act (32 Stat., 691) guarantees the equal protection of the laws to all persons in the islands. If, therefore, soldiers in the Philippines are entitled to be tried by jury, but

other citizens and the native inhabitants have not that right, there would seem to be a violation of that guaranty.

IV.

As to the claim that plaintiff is subjected to cruel and unusual punishment, the attention of the court is respectfully invited to the discussion of that question contained in the brief filed by the Government in the case of *Jose Paraiso* v. *United States*, No. 270, of the present term.

V.

The contention (brief on motions to dismiss, etc., pp. 16, 17) that plaintiff was not accorded a fair and impartial trial, because there is no law in the Philippine Islands making provision for a change of venue, does not seem to require serious consideration. If, as this court has decided, trial by jury is not a necessary incident of judicial procedure in the Philippines, much less is the right to a change of venue to be so regarded. The right is not at all similar to that of trial by jury. It is not a vested right, but a mere legal privilege to which a defendant is entitled upon the terms and under the qualifications prescribed by law. (*Dulany* v. *State*, 45 Md., 99; *Cotton* v. *State*, 32 Tex., 614.) It is not, like the right of trial by jury, conferred from considerations of public policy, but is a personal privilege which may be waived, and which may be lost by *laches*.

(*State* v. *Potter*, 16 Kans., 81; *Paris* v. *State*, 36 Ala., 232; *Kipp* v. *Cook*, 46 Minn., 535; *People* v. *Fredericks*, 106 Cal., 554.) And the granting or denial of a change of venue is a matter within the discretion of the lower court, not reviewable by this court. (*Kennon* v. *Gilmer*, 131 U. S., 22.)

Change of venue is authorized by law in a majority of the States, but there is no Federal statute on the subject, and Congress, in providing civil governments for the organized Territories, has only in certain instances granted the right, as, for example, in the case of Alaska (Alaskan civil government act of June 6, 1900, sec. 5, 31 Stat., 321) and Oklahoma (act of May 2, 1890, sec. 10, 26 Stat., 81). In Oklahoma, however, the courts have held that a change of venue does not involve a change of *judges* (*Stanley* v. *United States*, 1 Okla., 336), and that cases triable *without* a jury do not come within the statute (*Dean* v. *Stone*, 35 Pac. Rep., 578).

But it is unnecessary to discuss the question further. This court in the *Dorr* case (*supra*), after reviewing the rights under the Spanish system of procedure in force in the Philippines, and the additional guarantees given by the Philippine Commission in executing the power conferred by the orders of the President and sanctioned by Congress, has unqualifiedly approved the entire scheme, saying (p. 146):

> It can not be successfully maintained that this system does not give an adequate and efficient method of protecting the rights of the

accused, as well as executing the criminal law by judicial proceedings, which give full opportunity to be heard by competent tribunals before judgment can be pronounced.

It is respectfully submitted that the judgment below should be affirmed.

HENRY M. HOYT,
Solicitor-General.

O

In the Supreme Court of the United States.

OCTOBER TERM, 1907.

FRANK DE L. CARRINGTON, plaintiff in error, *v.* THE UNITED STATES. | Nos. 223, 224, 225.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

SUPPLEMENTAL STATEMENT BY THE UNITED STATES FOR THE INFORMATION OF THE COURT AS TO CERTAIN MATTERS OF FACT REFERRED TO AT THE ARGUMENT.

The Philippine Scouts are a part of the military establishment of the United States, and were authorized and organized under section 36 of the act of February 2, 1901 (31 Stat., 748, 757). The commanding officers of battalions are selected from the line of the Regular Army. [The Philippine constabulary is an insular police organization created by the Philippine act of July 18, 1901 (1 Phil. Laws, 326). The act of Congress of January 30, 1903 (32 Stat., 783), provided that officers of the Army may be detailed as chief and assistant chiefs of the constabulary.]

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In April, 1903, Carrington was detached from his regiment to command a battalion of Philippine Scouts (record in Adjutant-General's Office, appendix to opposing brief).

During the military occupation and the period of military government army officers were frequently ordered to be relieved of military duty and detailed to fill civil positions. After July 1, 1902, they were withdrawn from these posts and returned to their military duties as rapidly as possible, in accordance with the uniform policy of the law and the practice of the Army. See joint resolution of May 1, 1900 (31 Stat., 715), as to army officers serving in Porto Rico.

It is the fact now, and has been for a long period, that no army officers whatever are serving in civil posts in the Philippine government, except in the constabulary under the above act of Congress, and in the Moro provinces which were excepted from the operation of the President's proclamation of July 4, 1902. (32 Stat., 2014.)

No action was taken by the military authorities when Carrington was appointed or designated as disbursing officer of the Philippine funds. He was not ordered to take that post. No action was deemed necessary; the case was exceptional and peculiar; his duties as disbursing officer were germane to his dual relation to the army and the scouts and to the exhibit at the exposition. The military authorities selected Major Carrington as

a proper person to command the provisional battalion of Philippine Scouts. This was entirely proper and a matter within the exclusive jurisdiction of the military commander. The military authorities had nothing to do officially with his selection as a disbursing officer of insular funds.

These were territorial funds and not public funds of the United States. Carrington requested or suggested the transfer of the funds to him and accepted the office from the civil authorities. There was no interposition of military authority, therefore the proper jurisdiction to try him for the offense of falsifying the vouchers was in the civil courts. Ordinarily, in this country, where public funds of the United States are involved in the presentation of false accounts offending officers are tried by a court-martial in the great majority of cases, but even in that case they are sometimes remitted to the civil authorities. That was done here, in effect, by reason of the inaction of the army tribunal until after the civil court acted. If, although the fund involved was territorial and not national, a court-martial could have taken jurisdiction under the sixty-second article of war covering "*all* crimes, not capital * * * which officers and soldiers may be guilty of," the most that can be said is that that jurisdiction was concurrent with the civil jurisdiction and not exclusive. That is the view taken by the army legal authorities.

I have conferred with the proper officers of the War Department, and submitted the foregoing statements to them, and they confirm the same.

I submit, with deference, that without legislation the jurisdiction of military courts of the United States in the Philippine Islands ought not to be enlarged and made exclusive over all offenses committed by officers and soldiers, because in some possible but unlikely situation they might commit offenses against the civil government when acting in a civil office in pursuance of military orders, or because the offenses of the Philippine code fall into somewhat different categories and definitions from our own, or because an unreasonable and excessive punishment may have been inflicted on this defendant.

I append the charge and one of the specifications of the military tribunal.

The record of the court-martial shows that there were five fraudulent vouchers. The three informations in this court cover three of the vouchers. It does not appear whether prosecution was ever instituted respecting the two remaining vouchers. The records in Nos. 224 and 225, consolidated with this case for trial in the court below and here (record, p. 29), specifically impose cumulative sentences, amounting in all to forty years. Article 87 of the Philippine Code provides that—

> Upon a person guilty of two or more crimes or misdemeanors there shall be im-

posed all the penalties corresponding to the various violations of the law, to be simultaneously served if possible, in view of the nature and effects of such penalties.

I venture to suggest that when this court takes jurisdiction of a case under section 10 of the act of July 1, 1902, it has jurisdiction over the whole case and for all purposes; and that as the ultimate court of appeal for the Philippine system it has power to review all questions of law, at least, which arise, and to revise the punishment imposed by the court below. If that suggestion is sound, the court can now modify the judgment by making the sentences in the three cases run concurrently. That would be the same punishment as was imposed in the *Paraiso* case (14 years and 8 months), a prosecution for a similar offense under the same statute, in which the writ of error has just been dismissed by this court with an intimation that upon the merits the judgment should be affirmed. It may be that in both cases the executive should commute these heavy sentences required by the Philippine law to a reasonable period commensurate with the essential offense according to American ideas.

HENRY M. HOYT,
Solicitor-General.

GENERAL ORDERS, No. 121.

WAR DEPARTMENT, *Washington, July 26, 1905.*

Before a court-martial which convened at Fort Santiago, Manila, Philippine Islands, pursuant to Special Orders, No. 82, April 10, 1905, and No. 85, April 13, 1905, Philippines Division, and of which Colonel Winfield S. Edgerly, 2d Cavalry, was president, and Lieutenant-Colonel John A. Hull, judge-advocate, was judge-advocate, was arraigned and tried Major Frank de L. Carrington, 1st Infantry.

CHARGE.—"Conduct unbecoming an officer and a gentleman, in violation of the 61st Article of war."

Specification 1st—"In that he, Maj. Frank de L. Carrington, 1st U. S. Infantry, while in command of the Provisional Battalion of Philippine Scouts, and while having in his charge for disbursement public funds of the United States civil government of the Philippine Islands, appropriated on account of the said Provisional Battalion and on account of the Louisiana Purchase Exposition at St. Louis, Mo., and it being his duty to properly account for said funds, did, in violation of the trust and confidence reposed in him and with intent to deceive the United States civil government of the Philippine Islands and its officials, render and file with the auditor for the Philippine Islands a voucher for the expenditure of a part of said public funds, which voucher was in words and figures as follows, to wit:

* * * * *

CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES

AT

OCTOBER TERM, 1907.

CARRINGTON *v.* UNITED STATES.

ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

No. 223. Argued December 16, 1907.—Decided January 6, 1908.

An office commonly requires something more than a single transitory act to call it into being.

A money contribution by the Philippine Government to the performance of certain military functions, and entrusting the funds to an officer of the United States Army, who is held to military responsibility therefor by court-martial, does not make that officer a civil officer of the Philippine Government and amenable to trial in the civil courts for falsification of his accounts as a public official.

The fact that an officer of the United States Army, entrusted with money by the Philippine Government to be expended in connection with his military command, signs his account "Disbursing Officer" instead of by his military title, does not make him a civil officer of the Philippine Government; and *quære* whether he could become such a civil officer in view of the act of March 3, 1883, 22 Stat. 567, prohibiting the appointment of officers of the United States Army to civil offices.

THE facts are stated in the opinion.

Mr. Holmes Conrad, with whom *Mr. R. A. Ballinger* was on the brief, for plaintiff in error:

It appears from the record that the plaintiff in error was

not on February 12, 1904, or at any other time, a public officer of the United States civil government of the Philippine Islands, nor was he a duly appointed, qualified, and acting disbursing officer for public funds of that government, as stated in the charge. Accused could not be a public official of such civil government at any time under the laws of the United States. 22 Stat. 567; 1st Supp. Rev. Stat., ch. 124, p. 412.

The charge against this man is official misconduct, "abuse of his office." To sustain this criminal charge, there must be shown, first, that there was such an office as that which he is charged with having held; secondly, that he was duly appointed to that office; thirdly, that he qualified as such officer; fourthly, that he actually held that office under such appointment and qualification; and, fifthly, that the "abuse of his office" with which he is charged, viz., that he did "falsify a public or official document of which he had charge," is an offense known to the common law, or the statute law, or even to the Philippine law. *In re Bonner*, 151 U. S. 259.

While holding the office of major of the First Infantry, United States Army, and while on duty as such officer, under the assignment and orders of his superior officers, he was not amenable to the courts or subject to the laws of the civil government of the Philippine Islands for any offense committed by him in connection with the performance of his duties as a major of infantry in the United States Army.

As citizen of the United States and a commissioned officer of its army, lawfully stationed in the Philippine Islands, he was entitled to a trial by jury.

The punishment to which he was sentenced was illegal because cruel and unusual.

The Solicitor General for defendant in error:

The facts as to defendant's holding a civil office were that upon his own initiative, by resolution of the Philippine Commission and the action of the Governor, he was designated to receive, expend and account for a certain fund for the Philip-

pine Scout Exhibit at the St. Louis Exposition, and he accepted the post and acted accordingly. The Philippine Supreme Court found that he acted as a public official and took part in the performance of public duties. Whether he held a civil office or not, strictly speaking, he was empowered by competent authority, he accepted and discharged the duties imposed upon him, and held himself out as a public official of the Philippine government. He was thus an officer *de facto*, and not a mere intruder, and he cannot escape liability by denying title. *Hussey* v. *Smith*, 99 U. S. 20; *Buck* v. *City of Eureka*, 109 California, 504; *Allen* v. *McNeel*, 1 Mills (S. Car.), 229; *Diggs* v. *State*, 49 Alabama, 311; *People* v. *Church*, 1 How. Pr. 366; *State* v. *Long*, 76 N. Car. 254; *Wendell* v. *Fleming*, 8 Gray, 613. He was an official within § 401 of the Philippine Penal Code. And see 2 Viada, 695, as to the wide extension and latitude of the law.

The provisions of § 1222, and par. 4, § 1860, Rev. Stat., as amended, are inapplicable. They apply to the United States and organized Territories and not to the Philippines. They were enacted long before the islands were acquired, and their provisions have not been extended to the islands. Evidently neither Carrington nor his military superiors thought that he was subject to these prohibitions.

Carrington was not entitled to a trial by jury. *Dorr* v. *United States*, 195 U. S. 138. A soldier has no greater right than any other person in this respect. In the United States he is amenable to the civil courts for civil offenses, and if he is sent under the orders of his commanding officers to a State where the common law as to juries is not followed, he could not demand presentment and trial under the Constitution. The constitutional guarantees of trial by jury apply only to citizens and others within the United States or who are brought there for trial for offenses committed elsewhere, and not to residents or temporary sojourners abroad. *In re Ross*, 140 U. S. 453. The reasoning of that decision applies equally to citizens, whether soldiers or not, in a territorial possession of

the United States and before courts under the authority of the United States proceeding without a jury. To have two systems in the Philippines for different classes of persons is an impossible conception, and would be inconsistent with the express guarantee of the equal protection of the laws to all persons in the islands, contained in the Philippine Bill of Rights.

There is no foundation for the idea or claim that Carrington as an officer of the army was not subject to the jurisdiction of the Philippine courts at all. Nothing to that effect was intimated in *Grafton* v. *United States*, 206 U. S. 333. The points of decision in that case involved the implication that the military and civil jurisdiction were concurrent, and that the civil trial and conviction there would have been valid if the court-martial had not first tried and acquitted. The question always is, which jurisdiction attaches first? The civil courts took jurisdiction here, and subsequently, Carrington was court-martialed on the same transactions under the 61st Article of War, and was dismissed from the service.

MR. JUSTICE HOLMES delivered the opinion of the court.

The plaintiff in error was convicted in the Court of First Instance, and, on appeal, by the Supreme Court of the Philippine Islands, of the crime of falsification of a public document by a public official. He brings the case here by writ of error, setting up rights under the Constitution and statutes of the United States that were denied by the decision below.

The complaint alleges that the plaintiff in error "being then and there a public official of the United States civil government of the Philippine Islands, to wit, a duly appointed and commissioned major of the First Infantry, United States Army, and the duly designated, qualified and acting commander of the Provisional Battalion of the Philippine Scouts, and a duly appointed, qualified and acting disbursing officer for public funds of the said United States civil government of the Philippine Islands, appropriated on account of said Provisional Battalion and on account of the Louisiana Purchase Exposi-

tion at St. Louis," made a false voucher for the payment of seven hundred and seventy pesos.

The plaintiff in error denies that he was a public official within the meaning of the Philippine Penal Code, Art. 300, or that, under the act of March 3, 1883, c. 134, 22 Stat. 567 (see Rev. Stat. §§ 1222, 1860), he could be, while he remained an officer in the Army on the active list. The facts are as follows: In October, 1903, the plaintiff in error wrote a letter to the Executive Secretary of the Insular Government, suggesting that, as the Second Battalion of Philippine Scouts was expected to take part in the Louisiana Purchase Exposition, it would be well to allow the writer, with his scouts, to put up a model administration building of native materials for his use, at St. Louis, decorated with native arms, etc., and estimating that he could do this work for $3,000, gold. Governor Taft referred his letter to the Exposition Board, recommending the project, and the board accepted it. In November the Civil Commission passed a resolution, authorizing the transfer "to the credit of Major F. L. Carrington, 1st United States Infantry, commanding the Provisional Battalion of Philippine Scouts to be transported to St. Louis in 1904 in connection with the Philippine Exhibit," the sum of $3,000, "to be used and accounted for by Major Carrington in the construction" of a model administration building. It was resolved further that the disbursing officer of the Philippine Exposition Board should deposit to the credit of Major Carrington the further sum of $500, with which to pay some of the expenses of families of scouts allowed to accompany them to St. Louis, and that, on the approval of the resolutions by certain officials, the Civil Government might "designate Major Carrington as disbursing officer to receive the funds mentioned." The resolutions were approved, and Governor Taft in the same month addressed a letter to "Major Frank de L. Carrington, 1st U. S. Infantry, commanding Provisional Battalion Philippine Scouts," saying, "You are hereby designated to withdraw, receive, expend, and account for, the funds" above mentioned,

"to be expended in the preparation and display of a Scout Exhibit at the Louisiana Purchase Exposition as set forth in said resolution." These are all the facts that are supposed to constitute the plaintiff in error a public official within the Philippine Penal Code, although, it should be added, that in signing the false document he added, after his name, "Maj. 1st Infantry, D. O.;" the last letters meaning, it may be presumed, Disbursing Officer.

At this time the plaintiff in error was an officer of the Army on the active list, detached to command a battalion of Philippine scouts, admitted to be a part of the military establishment of the United States. Leaving names on one side, what happened was that he received $3,500 from civil sources, to be used by him in connection with his military command, in the performance of duties incident to that command. On the face of it the proposition is extravagant that the receipt of a small sum to be spent and done with forthwith in this way made him an officer of the civil government, notwithstanding the source from which it came, or the fact that he sent his accounts to the same quarter. An office commonly requires something more permanent than a single transitory act or transaction to call it into being. The letter of Governor Taft which designated Major Carrington to receive the fund says nothing about appointing him a civil or any kind of officer, nor did he qualify as one in any way. He was addressed by Governor Taft and he acted in his military capacity and under his military responsibility. He has been held to that responsibility by a court-martial. The only color for an additional liability is in the words quoted from the resolution of the Civil Commission, authorizing the Civil Governor to designate Major Carrington as disbursing officer, words which the Governor wisely did not adopt, and in the fact that the plaintiff in error gave himself that name. It is unnecessary to inquire whether he could have made himself a civil officer if he had tried, in view of the act of Congress absolutely prohibiting it. Act of March 3, 1883, c. 134; 22 Stat. 567. No one dreamed

that he was attempting it, and if he could have succeeded at the expense of his place in the Army under Rev. Stat. § 1222, no one supposed that he had done so, but he continued in his military command undisturbed.

We think it entirely plain that the acceptance of the duty of spending and accounting for this small fund did not amount to holding a civil office within the statutes of the United States. We see no sufficient reason to believe that the Philippine Penal Code, Art. 300, purports or attempts to reach a case like that of the plaintiff in error. The provision in Art. 401 that for this purpose every one shall be considered a public official who, . . . by popular election or appointment by competent authority, takes part in the exercise of public functions, does not help Article 300. That also seems to contemplate an office having some degree of permanence. But however that may be, the plaintiff in error was performing no public function of the civil government of the Philippines; he was performing military functions to which the civil government contributed a little money. As a soldier he was not an official of the Philippines but of the United States. If Philippine legislation attempted to add to the immediate responsibilities of the soldier in the course and performance of his duty under the paramount authority from which that legislation derives its right to be, we should have to inquire whether we could gather from any act of Congress the intention to permit what might become the instrument of dangerous attacks upon its power. It is a wholly different question from that where a soldier not in the performance of his duty commits an ordinary crime. But we do not understand the Penal Code to have the suggested scope.

Judgment reversed.

The same judgment will be entered in Nos. 224 and 225, which were to abide the result of this case.